

No. 12761

United States
Court of Appeals
for the Ninth Circuit.

JACK BORCICH, ANDREW VILICICH and
BORTUL ZANKICH, Co-Owners of the Oil
Screw Marsha Ann,

Appellants,

vs.

JOSEPH ANCICH, JOHN KAIZA, ANTON
BOGDANOVICH, PETER SVORINICH,
MARTIN MISKULIAN, RAY ZUKOWSKI,
WILLIAM T. DECKER, GEORGE KOR-
GAN, SAM BILAS, W. H. HOOPES, NICK
MILOSEVICH, GEORGE KORGAN and
SAM BILAS,

Appellees.

Apostles on Appeal
In Two Volumes
Volume II
(Pages 319 to 585)

Appeal from the United States District Court,
Southern District of California,
Central Division.



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December 13, 1949. 1:30 P.M.

The Clerk: 8960, Ancich v. Marsha Ann; for further trial.

Mr. Shallenberger: Mr. Sims, will you resume the stand?

LOUIS SIMS

called as a witness by the intervening libelants, having been previously sworn, resumed the stand and testified further as follows:

Mr. Shallenberger: May I have the last question and answer, Miss Reporter?

(The record was read by the reporter.)

Direct Examination

(Continued)

By Mr. Shallenberger:

Q. Now, Mr. Sims, showing you the report of February 28, 1949, which you have already identified as the report made by you after the job was completed, and directing your attention to the second page thereof, will you, using that if necessary to refresh your memory—in other words, Mr. Sims, I don't want you to read from that, but if you need to refresh your memory by it you may do so—will you tell us what damage you found aboard the vessel Bear?

A. Well, starting with the starboard side, in the [257] way of this damaged area——

Q. Keep your voice up, please.

A. Starting with the starboard side and the

(Testimony of Louis Sims.)

damaged area there, the bulwarks had been broken inboard, and the planking cracked in the bulwarks.

Also the main guard had been crushed, the main guard consisting of hardwood facing and two inner pads, the sheer strake directly below the main guard.

Q. Just a minute; may we stop, and will you explain what a "strake" is?

A. A strake is a course of planking; and directly inboard of that, on the inner side of the frames, is the vessel's main clamps, which runs longitudinally the full length of the vessel. That consisted of a 4½ by 10-inch Douglas fir timber. That had been broken.

The two main deck beams in the way of the damage had had the ends crushed, and the beams themselves were split.

The vessel's main decking, through from the starboard to the port side, was wracked and set to port.

Q. Just a moment, Mr. Sims. What do you mean by "wracked"?

A. Well, it had been twisted. It had been twisted by the force of the collision, and the main decking, of course, is spiked on to the deck beams, and when the ends of these two beams, in the way of damage to the guard and the [258] bulwarks, when it had hit the end of these beams it had forced them toward the port side of the vessel, and consequently the decking that was spiked on to your deck beams was also pushed over and, in the motion of pushing it over, it had strained the fastenings.

Q. And that was from starboard to the port side?

(Testimony of Louis Sims.)

A. Yes, sir, that is correct.

Q. In other words, all the way across the vessel?

A. That is right. The inner side of the vessel, over what is known as the ceiling wood on the inside of the frames, in the fish holds there are fitted hanging knees; and the hanging knees, there are three——

Q. Will you state what a “hanging knee” is? Will you describe it, and its purpose in the vessel?

A. Well, a hanging knee acts as a stiffener or a brace, and it is triangular in shape, generally being fitted beneath the main deck beam and against the ceiling wood on the inner side of the skin of the ship; and its purpose is to stiffen between the deck beams or between the main decking and the skin of the ship.

Q. Proceed.

A. The three hanging knees on the port side had been strained.

Q. On which side?

A. On the port, directly opposite the damaged area. [259] Three of them on the port, and there were two of them on the starboard side.

There was openings on the starboard side of the toes, and the foot of the frame, and there was openings at the knees on the port side, in the heel of the knees, where the entire structure of the vessel had been wracked out of shape.

Also the hatch coaming was strained.

Another thing was, when——

The Court: What is that?

(Testimony of Louis Sims.)

Mr. Shallenberger: Hatch coaming.

The Witness: The framing——

Mr. Roethke: Was that question answered? The Judge asked him what “hatch” was?

Mr. Shallenberger: The judge did not understand the word.

Mr. Roethke: Excuse me.

The Witness: The frames, also, along, along the starboard side and along the port side, were broken on a line with the lower heel of the hanging knees.

The Court: What do you mean by “frames”?

The Witness: The vessel frames, the frames which form the shape of the vessel, to which the planking is nailed.

Q. (By Mr. Shallenberger): You may proceed on.

A. There were also four strakes of ceiling wood on the starboard side of the fish hold that was broken. [260]

Now, on the port side there were frames broken there also, on a line with the bottom ends of the hanging knees, the planking had been popped from its fastenings, the fastenings parted, and the seams were standing open. The seams were standing open both on the port and the starboard side, at the turn of the bilge.

Q. And by “the turn of the bilge,” will you indicate, perhaps on this model would be the best, where the turn of the bilge is?

A. Well, it shows the portion of the hull below

(Testimony of Louis Sims.)

the water line, where it turns into and goes into the keel, the surrounding portion of the hull.

The garboard strakes, both the fore and aft ends of both port and the starboard garboard strakes had been strained and were standing out.

Q. And what are the garboard strakes?

A. The garboard strakes is the first strake of planking by the keel, that is, the first hull planking.

The engine, the engine foundations, the engine fastenings that hold it onto the foundation had been pulled, and it was loose. The vessel's entire hull, the planking on the entire hull had been shook up, and with the fastening started and the calking slacked. The main engine was also, as a result of being shook loose from the foundation, was out of alignment. [261]

I believe that this is, briefly, an account of the extent of the damage that we found.

Q. All right. Now, then, will you tell us, Mr. Sims, what was necessary to repair that damage?

A. Well, we removed and renewed an approximate 20-foot section of the starboard bulwarks. We removed and renewed the sheer and 13 strakes hull planking on the starboard side. We——

The Court: 13 strakes?

Mr. Shallenberger: Yes.

The Witness: Yes, sir. We bent and installed 46 bent oak sister frames on the starboard side. We cut out a section of the main clamp, fit a filler block in the section that was removed, and——

(Testimony of Louis Sims.)

Q. (By Mr. Shallenberger): What do you mean by a "filler block," Mr. Sims?

A. Well, it was a block that was fit back in place to replace a section of the clamp we cut out.

In other words, when the clamp was broken, it was impossible to jack the clamp back to the original position. So we had to remove that shattered section and fit in a filler block in the section that we had removed. And then after we had the structure of the vessel jacked back to the original position, we fitted a heavy backing piece over the damaged area and over the filler block that we had fitted, [262] and bolted that through. The backing piece extended over the original, a portion of the original clamp, and was bolted through that.

The hanging knees on both the port and starboard sides of the fish holds, the fastenings were relieved, and there again, after the structure was jacked back, those were refastened.

The main deck beams split on the starboard and were trimmed down, and there were sister frames, side frames, bolted through them. It was too big a job to take out the entire—it wasn't necessary to take out the entire beam. We just simply cut off the damaged area, and fitted the side frames to the beams.

Now, the main guard on the starboard side, we removed the steel facing and renewed an approximate 30-foot section of the main guard, complete from the sheer strake out.

The mast rigging and the chain planks were re-

(Testimony of Louis Sims.)

moved from the bulwark, in the course of repairs, and were reinstalled when the bulwarks were rebuilt.

The ceiling wood on the starboard side of the fish hold was removed and renewed.

Now, on the port side there were seven strakes of hull planking that were removed and renewed on that side. There were 44 stub frames that were cut to template, and installed.

Both the fore and aft ends of the garboard strakes, on [263] both port and starboard, were removed and renewed.

The engine foundations, when we removed the original hold-down bolts, the only thing we could do there was to fit engine stiffeners on the outside of the hull and bolt through them up to the engine, and bolt the engine to them, and secure it in that manner.

The remaining hull planking, the fastenings in the remaining hull planking were also removed and renewed, and it was necessary to recalk the calking and reset, and add additional fastenings on the remaining amount of the hull planking; and after that was effected we recalked the entire bottom.

Our main deck and hatch we removed on the turntable block, the turntable in the aft end of the vessel, we reefed out the aft main deck and provided timbers and jacks, shored it up, and jacked the wracked structure of it back to the starboard, to its original lines, then we refastened our main deck. We resecured the hatch coaming and recalked the deck.

(Testimony of Louis Sims.)

The covering board on the starboard side was the only portion of the main decking that was removed and renewed. That was the covering board that was crushed and broken in the way of the damaged area.

The engine was realigned after we had fitted the stiffeners to provide a sound foundation. [264]

Of course, the vessel was on the dry dock during the course of these repairs from November 30th to January 27, 1949.

Then the hull was painted, the bottom was painted. The engine was realigned after the vessel was afloat, between the date of the refloat on January 27th and the completion of repairs on February 15, at which time the vessel was then redelivered to the owners.

Q. Now, what was done, with regard to repairing the vessel, between the date of January 27th, when she was refloated, and February 15th, when she was turned back to the owners?

A. Well, the repairs that could be made afloat were then being completed.

Q. And what were those repairs, Mr. Sims?

A. Well, the calking of the main deck, and re-alignment of the engine, chiefly, was the final completion of it.

Q. Now, then, Mr. Sims, when was this repair work started?

A. Well, the vessel was hauled there on November 30th, I think, and repairs were started immediately, the next day, probably.

Q. And did those repairs proceed day after day

(Testimony of Louis Sims.)

on all working days until the vessel was turned back to the owners? [265]

A. That is right, with the possible exception of when it rained. I believe I recall that there were some days there that the rain delayed the work; but outside of that, why, it was carried right along in the usual manner.

Q. In other words, on the usual working day, unless there was rain, the vessel was worked on and was not idle?

A. That is correct, yes, sir.

Q. Now, then, Mr. Sims, to your knowledge, was there anything done by Harbor Boat Building Company in repairing this vessel which was not a result of this collision?

A. You mean was there any additional work?

Q. Was there any work done on the vessel which was not occasioned by this collision?

A. Not that I know of.

Q. Well, you were there every day, were you not? A. That is right.

Q. It was your duty to inspect the work being done on this vessel, was it not?

A. That is right.

Q. Now, then, Mr. Sims, do you know how much money was paid to Harbor Boat Building Company for these repairs?

A. Well, the price that we settled on.

Q. All right. What was that price?

A. Well, I think \$17,770.67.

Q. Now, then, Mr. Sims, did you have occasion

(Testimony of Louis Sims.)

to go [266] over the invoices for materials used in this vessel——

A. That is right.

Q. ——in the repair of this vessel?

A. I did.

Q. And did you go over those invoices?

A. I did.

Q. Did you satisfy yourself that the materials were used in the vessel?

A. Yes, sir.

Q. And that it was necessary to use them in the vessel?

A. That is right.

Q. Now, then, did you also check or have occasion to check the time cards of the workmen of Harbor Boat Building Company, for the time spent in labor in the repair of this vessel?

A. That is right.

Q. You did check them?

A. I did.

Q. And did you find them in order?

A. I did.

Q. And, in your opinion, did they represent the proper time, in hours and days and men, which was spent in repairing this vessel in the Harbor Boat yard?

A. That is correct.

Q. Now, then, Mr. Sims, in your opinion, was the [267] figure of \$17,770.—how many cents was it?

A. 67.

The Court: \$17,700?

The Witness: \$17,770.67.

Q. (By Mr. Shallenberger): Now, in your opinion, Mr. Sims, was that figure a reasonable figure for the repair of this vessel as you have stated it was repaired?

A. Yes, sir.

(Testimony of Louis Sims.)

Q. Mr. Sims, do you know Mr. Art Williams?

A. I do.

Q. And he is another surveyor, is he not?

A. Yes, sir.

Q. And was he also employed on this job?

Mr. Callaway: Just a moment——

The Witness: He was in attendance over there.

Mr. Callaway: ——I object to that as calling for a conclusion of the witness.

The Court: Sustained.

Mr. Shallenberger: I will withdraw the question.

Q. (By Mr. Shallenberger): Was he present on this job? A. Yes, sir.

Q. And, Mr. Sims, did Mr. Williams go over the material invoices and the work cards of the laborers with you, on this job?

A. Not with me, but I believe he did go over them. [268]

Q. Was he present at the time the figure of \$17,770.60 was reached with Harbor Boat yard?

A. Yes, sir.

Q. And did he agree that such figure was correct?

Mr. Callaway: Well, I object to that as again calling for the conclusion of the witness. If he had any conversation with him——

Mr. Shallenberger: Probably so.

The Court: Sustained.

Mr. Shallenberger: Of course, any conversation would probably be hearsay, if you object to it.

(Testimony of Louis Sims.)

Mr. Callaway: I will not object to it on that ground, sir.

Mr. Shallenberger: Thank you.

Q. (By Mr. Shallenberger): Was there any conversation between you and Mr. Williams and the Harbor Boat Company, or Mr. Williams and the Harbor Boat Company at which you were present, when this figure was discussed? A. Yes.

Q. All right; will you state what that was?

A. Well, at the completion of the repairs, the repairs had been quite extensive, and it was going to involve a long and detailed invoice. Consequently, Mr. Williams and myself discussed the matter of checking the bills together and agreeing upon the final price. [269]

Q. Well, what did you say, and Mr. Williams, in that respect? In other words, I want you to give the conversation that took place.

A. Well, I can't recall.

Q. I understand. In substance.

A. I just simply asked him if he was in agreement to meeting and discussing, checking the bills, and then agreeing to the figure, the final figure.

Q. What did he say?

A. And he agreed he was.

We got together; I personally checked all the invoices and time cards. We made our appointment, and met at Harbor Boat with Mr. John Rados, Al Rados, and Mr. Williams and myself, and agreed on this figure.

Q. Now, who is Mr. John Rados, and who is Mr. Al Rados?

(Testimony of Louis Sims.)

A. Mr. John Rados is president of Harbor Boat Building Company, I think, and Al Rados is the assistant secretary.

Q. And the Harbor Boat Building Company was the company that performed this repair?

A. Yes.

Q. You say you and Mr. Williams and the Harbor Boat Company agreed to this figure. What did Mr. Williams say?

A. Well, he just agreed that it was a fair and reasonable figure.

Q. Is that what he said, that it was a fair [270] and reasonable figure?

A. Words to that effect.

Mr. Shallenberger: You may cross-examine.

Mr. Roethke: Mr. Callaway, we have a stipulation that this amount was actually paid to Harbor Boat Company, so we won't have to get Mr. Rados up here.

Mr. Callaway: If you tell me it was——

Mr. Shallenberger: I don't believe it was.

Mr. Callaway: If you tell me it was, I will stipulate.

The Court: You don't work for the Harbor Boat Company?

The Witness: No.

The Court: You work for a firm of marine surveyors?

The Witness: Yes.

The Court: What is their name?

(Testimony of Louis Sims.)

The Witness: P. Banning Young.

The Court: They were employed in this case?

The Witness: Yes. In this particular case I was representing the underwriters of the Bear.

Mr. Shallenberger: By the way, may I make this statement, in clarification of what the court asked just before the noon adjournment?

The Court: Yes.

Mr. Shallenberger: The bill on the Bear, I stated, had been paid by the Bear's underwriters. However, nothing had been paid with regard to detention damage or the seamen's loss. [271]

The Court: I understand.

Mr. Shallenberger: I thought probably the court did, but I wanted to make sure.

The Court: I want to ask another question, whether or not these repairs were contracted for by Korgan and Bilas, or contracted for by the underwriters.

The Witness: Korgan and Bilas.

The Court: In other words, Korgan and Bilas came to your company in connection with this repair job?

Mr. Fall: I can give you actual knowledge on that, if the court please. What happened was the owners immediately notified the underwriters they were in a collision, and the underwriters requested the firm of P. Banning Young to survey, on behalf of the underwriters and for the underwriters' account.

(Testimony of Louis Sims.)

The Court: That is what I thought, and I wanted to know if that was the case.

The Witness: That is the case.

Mr. Fall: That is it; and I am sure Mr. Korgan did nothing but notify the underwriters of the collision.

The Court: Of course, my mind is open; I have only heard one side of the case. Like taking a car to a garage for repair, if I have an insurance company and the insurance company undertakes to get it repaired, that is one thing. If [272] I take it in and have a fender fixed up and two or three coats of paint, and the insurance company then comes into the picture, there might be an argument.

Mr. Roethke: No, I think the surveyor is called, and undertakes the survey to see what is necessary for the account of the underwriters, writes up the survey reports and specifications.

Now, if the owners want contemporaneous work done, that is their own account.

The Court: Is the surveyor ordinarily called in by the underwriters?

Mr. Roethke: He is, and paid by the underwriters. In this case, Mr. Young's office rendered a bill and were paid by the underwriters.

Mr. Shallengberger: And I might state this, your Honor, to recall to your Honor the testimony of Mr. Korgan, that he did not order the work done by the Harbor Boat Company, nor did he direct the work to be done. He so testified when he was on the stand.

(Testimony of Louis Sims.)

The Court: Is the underwriters' bill a proper element of damage?

Mr. Roethke: You mean the surveyor's bill?

The Court: Yes.

Mr. Roethke: Yes, it is; and I think Mr. Shallenberger is going to inquire of Mr. Callaway. [273]

Q. (By Mr. Shallenberger): Mr. Sims, did you, on behalf of your employer, P. Banning Young, render a bill for the survey fee, in connection with the survey and repair of the diesel vessel Bear?

A. Yes, sir.

Q. And was that rendered to the underwriters; in care of Mr. Lillick's office?

A. Yes, sir, I believe it was.

Q. And is this amount of \$507.94 correct? Is that the amount that you rendered a bill for?

A. I believe that is the amount.

Q. And has that bill been paid?

A. Yes, sir.

Mr. Shallenberger: You may cross-examine.

Cross-Examination

By Mr. Callaway:

Q. Mr. Sims, how long have you been surveying wooden boats?

A. In my present capacity?

Q. How long have you been a marine surveyor of wooden boats? A. Since July, 1947.

Q. And prior to that time, were you in the patent medicine business of some sort?

A. No, sir. [274]

(Testimony of Louis Sims.)

Q. You never have?

A. Never have what?

Q. Never have been in the patent medicine business?

A. Not that I know of.

Q. Well, now, you knew, did you not, that this boat—oh, I think one of the owners testified—was built in 1917?

A. That is correct.

Q. And you saw her when she was down, when the hull planking was off, and what-not?

A. Yes, sir.

Q. And these photographs are fair representations of her ribs and part of her inside of the hull, are they not?

Mr. Shallenberger: Would you identify them, please, for the record?

Mr. Callaway: Yes. I am showing him Respondents' Exhibits A, B, C and D.

The Witness: Now, what was it again, please?

Q. (By Mr. Callaway): These photographs are fair representations of different sections of her ribs, and part of her hull?

A. That is right.

Q. And these were new ribs that were installed, the ones that appear to be new in the picture, in the boat yard, after the collision, were they not?

A. Yes, sir, that is right. [275]

Q. Now, these old ribs would not even hold fastenings, would they?

A. Certainly.

Mr. Shallenberger: What do you mean, certainly they would or certainly they wouldn't?

The Witness: Certainly they would hold it. The

(Testimony of Louis Sims.)

planking was all there when she came in, except for the section where it was broken loose.

Q. (By Mr. Callaway): Well, did you see any of the nails in that wood that was taken out and thrown aside? A. That is right.

Q. Were they rusted down to the point where they had no holding capacity, any of them?

A. Oh, any time you got a nail you got holding capacity. Any time you have any portion of a nail——

Q. Did you keep any portion of that wood?

A. No.

The Court: What size spikes do they use to put planking on? Do they use spikes to put planking on?

The Witness: Yes.

The Court: What size?

The Witness: It depends on the thickness, and the frames.

The Court: On a board the size of this.

The Witness: They had finish 2-inch planks, and the frames were 2 by 3 built over the original construction. [276]

The Court: And what size spikes were those?

The Witness: About three and one-half inch spikes.

The Court: Three and one-half inches in length?

The Witness: Yes.

The Court: What size in diameter?

The Witness: About $\frac{3}{8}$.

(Testimony of Louis Sims.)

The Court: And was that the size that was used?

The Witness: I believe that was pretty close to it, yes, sir.

Q. (By Mr. Callaway : Well, did you furnish Mr. Williams a copy of this survey you made in this case?

A. Did I furnish Mr. Williams?

Q. Yes. A. No.

Q. Isn't that customary?

A. No, it is not. My survey was made for the benefit of the underwriters of the Bear.

Q. Now, from your observation of this boat, would you say that this planking that you see missing in Respondents' Exhibit A was in good condition, or rotten? A. Well——

The Court: That is, interior planking in Respondents' Exhibit A?

Mr. Callaway: Yes, that is missing.

The Witness: It was ceiling wood on the inside of the [277] fish hold, and that is nailed to the inner side of the frames.

The Court: Is that 1-inch?

The Witness: That is just a little over, I think, an inch and a half in thickness.

Mr. Shallenberger: Keep your voice up, Mr. Sims.

The Witness: All right. So far as the planking is concerned, and so far as the rotted condition is concerned, the planks there, that is like saying that a table that may have rot in it, that is saying your table is rotted.

(Testimony of Louis Sims.)

Q. (By Mr. Callaway): I didn't ask you that. I asked you a simple question: Was that rotten, or was it in good condition?

A. That is my answer. Sure there is a certain amount of deterioration there, but if you say a plank is rotten, to what extent?

Q. Well, these ribs here that you see in Respondents' Exhibit B, were they rotten or were they in good condition?

A. Well, they are broken.

Mr. Callaway: I didn't ask you that.

Mr. Shallenberger: You asked the condition.

Mr. Callaway: I asked him if they were rotten or in good condition, irrespective of whether they are broken or not.

The Witness: I don't know whether they were rotten or not. [278]

Q. (By Mr. Callaway): Didn't you see them?

A. Sure, I saw them. I didn't take these pictures.

Q. That doesn't answer——

A. Some of them were partially affected by a certain amount of rot, and some of them weren't.

Q. Now, they were all replaced, though, were they not?

A. No, they weren't replaced. There were sister frames added. There were sister frames added to the starboard side and stub frames added to the port side.

Q. And instead of taking the frames out, you added the frames in, as you see in this picture?

A. Yes.

(Testimony of Louis Sims.)

The Court: It would cost more money to take them out?

The Witness: Yes.

The Court: You would have to take it clear to the bottom of the keel, and to the top?

The Witness: That is correct.

The Court: And by putting sister frames in, you could leave the undamaged portion there?

The Witness: The hull planking not affected by the damage. In other words, what we did, we removed the planking that was affected by the damage, then the frames, of course, were longer than the area of planking removed, and we shoved them down, and back up, and refastened through them.

Q. (By Mr. Callaway): Now, when did you first have a [279] copy of this so-called itemized bill from the Harbor Boat Building?

A. That copy you have there?

Q. Or any copy of it.

A. Well, this first copy here was——

Q. No, no.

A. ——rendered on completion of the repairs.

Q. I am not asking——

A. This copy here I obtained last week, or just recently.

Q. Was it made up at that time?

A. Was what made up?

Q. This copy last week.

A. I don't know whether it was made up at

(Testimony of Louis Sims.)

that time or not. I went and asked them for it, and they got it for me.

The Court: What do you mean by "that time"?

The Witness: Pardon?

The Court: What do you mean by "that time"?

Mr. Callaway: I mean February 16, 1949.

Q. (By Mr. Callaway): You never furnished a bill such as that to Mr. Williams?

A. As to that, I don't know. I know that I received five or six copies of it.

Q. You know whether or not you sent Mr. Williams a [280] copy of this after you——

A. I didn't send it to him.

Q. Well, did you send him a copy of your original bill you had in your possession?

A. I did not.

Q. You did not?

A. I never sent him any. Harbor Boat may have sent it to him, I don't know.

Q. Now, so on all the work you did on the Bear, you didn't find any of this replacement of damaged or deteriorated parts, according to your survey, attributable to deterioration and wear and tear; is that right?

The Court: What is that question? Read it.

(The question was read by the reporter.)

Mr. Callaway: I will reframe it, if you don't understand it. In other words——

The Court: I know what you are getting at.

(Testimony of Louis Sims.)

Mr. Callaway: I probably haven't framed it very well. I will try it over again.

Q. (By Mr. Callaway): You didn't attribute any of this damage, so-called, to the owner's account, on account of deterioration, ordinary wear and tear?

Mr. Shallenberger: Just a minute. I will object to that as ambiguous and uncertain. I certainly don't know what that means. [281]

The Court: Well, I will overrule your objection. He may answer.

The Witness: So far as the repairs to this vessel are concerned, they were all the direct result of the collision and the damage.

The Court: What condition were the two main deck beams in, that you mentioned?

The Witness: The main deck beams——

The Court: You said the ends were split.

The Witness: The ends were crushed; they were shattered.

The Court: What condition were those two beams in?

The Witness: You mean the soundness of the timber?

The Court: Yes.

The Witness: Yes, they were sound.

The Court: As I visualize this from your testimony, they would run crossways?

The Witness: Yes.

The Court: And the ends of them came out some-

(Testimony of Louis Sims.)

where near the point where the point of impact occurred?

The Witness: That is correct.

The Court: Do they come somewhere near the guard rail?

The Witness: Yes, sir.

The Court: Just below the deck, are they?

The Witness: Yes.

The Court: And the guard rail—— [282]

The Witness: Is on a line with the deck.

The Court: These two beams, then, caught a certain amount of the force of the collision?

The Witness: That is correct. And it was by being struck this terrific force on the end of them, when it was struck, and it pushed the entire after deck to port.

The Court: What do those beams lay against on the other end?

The Witness: The other side of the vessel, and bolted into the clamp.

The Court: Do they snug up against the clamp in this manner (indicating)?

The Witness: No, rest on top of it.

The Court: Bolted down?

The Witness: Bolted through.

The Court: And do the ends—what do the ends rest on?

The Witness: They rest against—well, they are alongside of the frames.

The Court: Are they bolted to the frames?

(Testimony of Louis Sims.)

The Witness: Yes, sir. The clamp is bolted to the frame, also.

The Court: The planking is nailed to the main deck beam?

The Witness: Yes.

The Court: And the knees are fastened to the deck beam? [283]

The Witness: Yes, sir. That is bolted to the deck beam, and also to the ceiling wood.

The Court: Is the knee also fastened down to the main clamp?

The Witness: It is notched so it fits up over the clamp.

The Court: It is not bolted to it?

The Witness: Not bolted to it, no, sir. And on this area in the starboard side that was crushed, you have a total thickness of the main guard, of 6 inches, 2 inches of the sheer strake, and 4½ inches of the main clamp, making a total of 12½ inches of timber that was completely broken; and also the end grain of the two deck beams was crushed and shattered.

The Court: Counsel, you can object to my questions, if you want to. You can object at any time.

Mr. Callaway: No, I understand.

The Court: Let me ask you this: Supposing those two main deck beams that ran crossways across that ship had been, we will say, very badly worn and, we will say, rotten?

The Witness: Yes.

The Court: So that they would have collapsed

(Testimony of Louis Sims.)

from the force of a blow on the ends of them; would there have been less of a shock against the port side of the boat, or is that a possibility? They would have to be pretty rotten, wouldn't they?

The Witness: Well, of course, the thing that probably would have happened there,—in other words, suppose there had been no deck beams there, the bow of the other vessel would probably have knocked into the side of the deck planking, and that, laying across the deck, probably still would have carried the shock of it to the port side.

The Court: All right.

Q. (By Mr. Callaway): Now, the deck planking runs in what direction?

A. Fore and aft.

Q. Back and forward. Now, is this a reasonable representation of a view of the deck, I suppose looking toward the fish hold?

The Court: Exhibit what?

Mr. Callaway: It is not in evidence yet, your Honor.

The Court: Not marked.

The Witness: I don't even know if this is the same one or not.

Mr. Callaway: If you don't know, that is all right. I will mark it for identification.

The Clerk: Respondents' Exhibit K, for identification.

(The photograph referred to was marked Respondents' Exhibit K, for identification.)

(Testimony of Louis Sims.)

Q. (By Mr. Callaway): Whether or not this is a photograph of the deck, what was done at or about that part of the [285] Bear with respect to repairs?

A. Well, the calking in the main deck was reefed out. The calking was reefed out, and shoring was provided in the interior of the fish hold, together with jacks, so we could jack it back, jack the wracked structure to the original lines, then the fastenings were reset in the deck and the deck was recalced.

The Court: What kind of fastenings?

The Witness: Nails, short spikes.

Q. (By Mr. Callaway): Anything else?

A. Anything else what?

Q. Done, as far as that particular part of the boat is concerned?

A. Well, what do you mean "done"?

Q. Have you told us everything that was performed in the way of repairs or restoration in that part of the boat?

Mr. Shallenberger: Do you mean the deck, or that portion of the boat?

Mr. Callaway: That portion of the boat that this picture shows.

The Witness: Well, as I remember, that is it, yes.

Q. (By Mr. Callaway): Now, is it your testimony, Mr. Sims, that in so far as you know, this work was completed as expeditiously as it could

(Testimony of Louis Sims.)

have been, that is, without working Sundays or nights or days when weather didn't permit? [286]

A. That is right.

Q. In other words, every time you were there on a day that was a work day and that the weather wasn't inclement, somebody was working on the building?

A. That is right.

Mr. Callaway: I have no further cross-examination.

The Court: Just one question or two here that I want to ask you about.

You say on the port side that seven strakes of hull planking were removed?

The Witness: I believe that is what I said. I can check here a minute.

The Court: What was wrong with the strakes on the port side?

The Witness: The strakes on the port side had been—yes, seven strakes. They had been kicked out at the bottom end of the knees, and the entire side of the vessel had been kicked out when it it it.

The Court: The strakes are just the planks on the outside?

The Witness: Yes.

The Court: And by "kicked out," you mean the fastenings had come loose and they were loose?

The Witness: Yes. The foot heel frame or knee had broken the frames. [287]

The Court: Inside?

The Witness: Yes, sir.

The Court: Why was it necessary to remove

(Testimony of Louis Sims.)

these seven strakes? Was any planking put in?

The Witness: Yes, there was. The planks were removed so we could install the stub frames alongside of the original frames, to repair the broken frames.

The Court: What was wrong with the planking that it couldn't be put back?

The Witness: Well, when you tear it off you don't use much—I mean it is usually quicker and cheaper and a better job to go ahead and pull it off, and you save time, rather than try and salvage it.

The Court: In other words, when taking it off, it is sometimes just pulled out?

The Witness: Yes.

The Court: And it is cheaper to put new planking on than to carefully take off the plank that is there?

The Witness: Yes; because the labor involved is greater cost than the lumber.

The Court: Thank you.

Mr. Shallenberger: Do you have any more questions, your Honor?

The Court: No. [288]

Redirect Examination

By Mr. Shallenberger:

Q. Mr. Sims, calling your attention to the Respondents' Exhibit B, which Mr. Callaway showed you a while ago, and calling your attention to these sister frames, why was it necessary to put those sister frames in, Mr. Sims?

(Testimony of Louis Sims.)

A. Well, because of the broken and split condition of the original frames.

Q. And by "broken and split condition," what do you mean?

A. Well, they were broken, they were split out here, split and broken there (indicating).

Q. Now, did you form any opinion as to what broke them or split them?

A. Well, that is right on the line with the lower end of the knees, where the knees fit on the inside of the fish hold, and that also was on the line of the turn of the bilge; and when the knees were kicked out, evidently that is what broke them.

Q. In other words, it is your opinion that these were broken at the time of the collision, is that correct?

A. That is correct.

Q. Now, then, Mr. Sims, do the ribs or the frames—those are the same things, aren't they?

A. Yes, that is right. [289]

Q. Do the ribs or the frames constitute the strength member of the vessel?

A. Well, not in the true sense of the word, no. It is not one of the main strength members of the vessel.

Q. What is the purpose of ribs or frames?

A. The ribs or frames is what forms in the line of your hull, and it is to them that the hull planking and skin of the vessel is fastened.

Q. And is their main purpose to hold the hull planking?

A. Yes, a means to install your hull planking.

(Testimony of Louis Sims.)

Q. I notice in this Exhibit B of respondents—I don't know if there was any testimony directed to this particular matter or not—I notice some timbers extending a portion of the way down in the three places there alongside of the planks.

Would you tell me what those are?

A. Those are the lower ends of the bulwark stanchions.

Q. And those are not frames? A. No, sir.

Q. And did they ever extend below——

A. No.

Q. ——the area shown? A. Never.

Q. In other words, they are as they were when they [290] were installed? A. That is right.

Mr. Shallenberger: No further questions at this time.

Mr. Callaway: Excuse me.

Recross-Examination

By Mr. Callaway:

Q. The truth of the matter is these frames here, whether they were broken or not, wouldn't hold a spike, would they?

A. They wouldn't hold a spike?

Q. Yes. A. Not in their present condition.

Q. Now, you replaced 40 frames, didn't you, in all? A. Something like that.

Mr. Shallenberger: I think it was 46.

Q. (By Mr. Callaway): Well, it is your contention that all of those were broken as a result of force? A. It is my contention what?

(Testimony of Louis Sims.)

Q. It is your statement in the testimony that they were all broken as a result of force?

A. They were all broken as what?

Q. As a result of force or collision.

A. No, I didn't say that.

Q. Well, I misunderstood you.

A. I said all of the repairs that were effected were [291] effected as a result of the collision.

Mr. Callaway: All right, that is all.

The Court: That is all. You may step down.

(Witness excused.)

Mr. Shallenberger: If the court please, that, I believe, is the libelants' and the interveners' case, with one exception, that exception being the further testimony as to detention damage and as to the loss of earnings of the fishermen.

Mr. Callaway and I have met once or twice during the course of the trial, and some figures have been exchanged with regard to determining that. I believe that probably we can determine that without the necessity of taking further evidence on it. However, the question does not affect the question of liability, and if it is necessary to take further evidence, I believe Mr. Callaway is willing that it may be taken before the Commissioner; is that correct?

Mr. Callaway: Yes.

The Court: In other words, if there is a finding in favor of libelants, and if you don't get together on what you think the detention damage and loss of the fishing venture was, then it would be referred to Commissioner Calverley?

Mr. Shallenberger: Yes.

The Court: Before you close your case, there has been some reference to Peter Svorinich. Is it stipulated he was a member of the crew? [292]

Mr. Shallenberger: He was on the stand.

Mr. Roethke: I think the one you are referring to, your Honor, is Zukowski.

The Court: Zukowski is the one I was referring to.

Mr. Fall: It was testified by one of them that he was a member.

Mr. Shallenberger: I am glad your Honor brought that up. May I call Mr. Korgan for a minute on redirect examination?

The Court: Mr. Bilas was not called as a witness?

Mr. Fall: No.

The Court: It is stipulated he was a member of the crew?

Mr. Fall: Yes.

The Court: There may have been some testimony, but my notes don't so show.

Mr. Callaway: If they say so.

Mr. Shallenberger: That is Mr. Bilas? I will have Mr. Korgan testify with regard to Mr. Bilas.

GEORGE KORGAN

one of the intervening libelants herein, recalled as a witness by intervening libelants, having been previously sworn, was examined and testified further as follows:

Direct Examination

By Mr. Shallenberger:

Q. Mr. Korgan, you are a partner of Sam Bilas, and he [293] was also fishing on the boat Bear during the October to February, 1948-1949 sardine season? A. No.

Q. He was not?

A. He was fishing in the beginning three days, then he gets sick, then he went to hospital.

Q. Was it contemplated he was going to fish the rest of the season, or not?

A. I don't think so, because he is sick yet.

Mr. Shallenberger: I am sorry, your Honor. I didn't understand. You may be excused.

(Witness excused.)

Mr. Shallenberger: In that case, we will ask——

The Court: Does the record show the share, the boat's share was 32 per cent, as I recall?

Mr. Shallenberger: Yes.

The Court: And the crew's share was 68 per cent?

Mr. Shallenberger: Split among them equally; and that Mr. Korgan received an equal share along with the rest of them.

Mr. Callaway: If these gentlemen will sign the stipulation I prepared, that is included in it.

The Court: I haven't seen it.

Mr. Callaway: It hasn't been signed.

Mr. Shallenberger: I signed it at 9:30 this morning. [294]

Mr. Roethke: I haven't signed it. I don't know what Mr. Callaway means by paragraph 3. I will ask him to explain it. If he can——

Mr. Callaway: I will show it to you.

(Handing document to the court.)

The Court: I thought that Mr. Roethke asked for a stipulation early in this proceeding with reference to the necessity of impleading certain people; or was it Mr. Callaway?

Mr. Callaway: I was the one that asked it. Of course, it is a matter that concerns only Mr. Shallenberger and Mr. Fall; it doesn't concern Mr. Roethke at all.

I stated my position at the pretrial hearing.

Mr. Roethke: Now we have a reporter present, if you will, restate it.

Mr. Callaway: There is some indication in the cases, your Honor, where you have to implead any party that might be responsible for any portion of the damage. I don't want it to be said at the conclusion of this case—in other words, a libelant, as I understand it, like a plaintiff, can pick out the party that they want to sue, and even though others are liable, simply because they don't sue them doesn't change their position, except in a case of this kind where, assuming that the court made a finding of mutual fault, then I don't want it to be said, "That

doesn't make any difference; they are not before the court in the intervening libel of the [295] fisherman case, so to speak, so you would be liable for the whole amount anyway."

It is just a remote possibility. I don't want to file another pleading, but if counsel won't have it another way I will do it.

Mr. Roethke: I still don't understand what you are driving at.

The Court: As I understand, except for the limitation—if you said it is not necessary that the respondent implead the owners of the Bear, period, that makes sense. Then if you add on to it——

Mr. Callaway: I am willing to strike that last out.

The Court: Does that solve your problem?

Mr. Shallenberger: It makes his problem worse.

Mr. Roethke: I don't know what he is driving at. Mr. Callaway says he wants to get out of filing a cross-libel, I don't understand his position.

Mr. Callaway: It isn't sinister.

The Court: As I understand Mr. Callaway's position, there are cases where, when it appears there might be mutual fault, there is some problem unless all the parties are impleaded; is that it?

Mr. Callaway: Yes.

The Court: So he wants the stipulation so he can argue there was mutual fault as far as both vessels are concerned, [296] and argue that in the claims for the fishermen; and except for the limitation, can argue it as far as the claims of the vessel.

Mr. Roethke: Your Honor, I think he can argue it as it is.

Mr. Callaway: Then what harm to have a stipulation?

Mr. Roethke: Then it is mere surplusage. You want something you already have. I still don't know what this means, and I don't want to have it thrown in my face later, as I have in the past, that this means something other than what it says. I don't know what it means.

Mr. Fall: Isn't it a fact, on this claim of mutual fault, in the event the court would find there is mutual fault, then you wish to proceed against the owners of the Bear with reference to your recovery of one-half of the amount you may be found liable for by reason of the obligation at sea and the loss of that catch?

Mr. Callaway: That is the size of it. In other words, I don't want you—Roethke isn't in this case—I don't want you and Shallenberger to argue that can't be done. If you tell me you won't, we can strike out the whole of paragraph 3 that says by the fact we have not impleaded the Bear we would be foreclosed from contending for any reduction in damage we would be entitled to even in the event of mutual fault. [297]

Mr. Fall: I don't think that is an issue here. In other words, if he is seeking to recover from them, it is not necessary to be a party to this particular action.

The Court: I know, but he wants it settled in this action. Can't we settle it now? Leave Mr.

Roethke out—Strike paragraph 3 from the stipulation, and Mr. Roethke won't be interested—and have the stipulation that in the event the court finds there is mutual fault between the vessels, and in the further event the court finds that the fishermen are entitled to some recovery, that Mr. Callaway will have whatever right he has against the owners of the Bear, in the same manner as though he had impleaded them?

Mr. Callaway: That is all I want.

The Court: Is that satisfactory?

Mr. Fall: I have no objection.

Mr. Shallenberger: I never had any objection.

Mr. Roethke: Now he is getting me into it. I am representing the owners of the Bear, as far as the legal rights are concerned.

Mr. Callaway: You don't have to enter into that.

The Court: I don't think that affects the case. Read the statement I made.

Mr. Roethke: It affects the recovery against my people. If he wants any recovery here, we are 13 months after the collision, and Mr. Callaway is trying to file a cross-libel [298] against me without filing a pleading.

The Court: Read my statement.

(The record was read by the reporter.)

The Court: I meant for that apportioned for the fishermen's recovery. That is what I meant, the fishermen's recovery only.

Mr. Callaway: I still am agreeable to that.

Mr. Fall: I do not stipulate that my clients would not be entitled to a judgment——

The Court: Well——

Mr. Fall: Let me explain it. ——against one party for the whole or against the other party for the whole. As far as impleading, I don't care.

The Court: You gentlemen talk about it in the recess, and let's go ahead with the case. If you can't get together with them, you have a right, I take it, to file an intervening libel.

Mr. Callaway: Yes, I do.

The Court: See if you can't get together.

Mr. Roethke: I only want it pinned down. I don't want to stipulate to something I don't know.

Mr. Shallenberger: If the court please, in order that the record may be straight in regard to the intervening libelant, Sam Bilas, I hereby move to dismiss the third cause of action so far as the intervening libel of Korgan and [299] Bilas, in so far as Sam Bilas is concerned.

Mr. Callaway: No objection.

The Court: Motion granted. That was the portion involving the fishermen's share?

Mr. Shallenberger: That is correct. In other words, I would rather have it that way than to have a finding against him.

The Court: In other words, that means there are only nine shares instead of ten?

Mr. Shallenberger: No, there are still ten shares. In other words, Bilas was not aboard the vessel when this accident occurred, and they had another man take his place, and apparently, from Mr. Kor-

gan's testimony today—which I hadn't heard before—he undoubtedly would have finished out the season.

Mr. Callaway: Is he before the court?

Mr. Shallenberger: Yes.

Mr. Fall: Ancich, Kaiza, Bogdanovich, Svorinich, Miskulin, Zukowski, Decker, Hoopes, Korgan and Milosevich. That makes ten.

The Court: That is right; Bilas would have made eleven.

Mr. Roethke: Bilas, of course, if the court please, is before the court as far as——

The Court: I understand. You rest, then? [300]

Mr. Shallenberger: Yes, with the understanding I mentioned.

Mr. Roethke: With the exception of the point on the libel.

The Court: You may proceed.

Mr. Callaway: Do you want to take a recess at this time?

The Court: All right.

Mr. Callaway: I want to ask you, what time do you plan to finish? I am running a little fever.

The Court: I was planning to work you fellows a little late, because I have another case set for tomorrow; but I have made an appointment with some fellows on a record to settle, who are supposed to be here at 4:00 o'clock. If they come into the court room, I will adjourn. Is that all right with you?

Mr. Callaway: Yes. I will finish the evidence tomorrow.

The Court: You will take all day, you mean?

Mr. Callaway: No, I will finish by the middle of the afternoon.

The Court: How many witnesses do you have?

Mr. Callaway: Well, I have got about ten. We may get down to the place where I will ask for a stipulation that if the others were called they would testify substantially so-and-so, because when you get down to the witnesses who [301] didn't actually see the two boats, I think we can stipulate.

Mr. Shallenberger: I think we can shorten it considerably, your Honor.

The Court: All right, we will take a short recess.

(A short recess was taken.)

The Court: One thing more. Mr. Callaway made an objection, before the first witness was called, to the introduction of any evidence, and I take it for the purpose of the record his objection has gone to the testimony of any witness concerning the rights of the fishermen?

Mr. Shallenberger: Yes.

The Court: We might as well keep the record straight. I think that is the intention of all of us.

Mr. Callaway: Yes, sir.

The Court: The record will so show.

Mr. Callaway: I call Vincent Tudor.

VINCENT TUDOR

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

(Testimony of Vincent Tudor.)

The Clerk: Your name is Vincent Tudor?

The Witness: Yes.

The Clerk: Take the stand.

The Court: What is this witness' name?

The Witness: Tudor; Vincent Tudor. [302]

Mr. Shallenberger: We can't hear the witness.

The Witness: Vincent Tudor.

The Court: What is his capacity?

Mr. Callaway: He was in the pilothouse with the skipper, and he is working, and we are anxious to get rid of him today.

The Court: Here is what I have in mind: I take it this is Mr. Borcich (indicating)?

Mr. Callaway: Yes.

The Court: Has this gentleman been in court at all?

Mr. Callaway: No. He has been here two days.

The Court: Have you any objection to Milosevich being permitted to be in here during his testimony now?

Mr. Callaway: No.

The Court: The bailiff can call him in and let him remain in here. He is probably out in the corridor.

Go ahead.

Direct Examination

By Mr. Callaway:

Q. Where do you reside, Mr. Tudor?

A. San Pedro.

Q. Will you keep your voice up, please?

(Testimony of Vincent Tudor.)

A. San Pedro.

Q. By whom are you employed at the present time? A. Andrew Vilicich.

Q. In what capacity? [303]

A. Fisherman.

Q. What boat? A. Gallant.

Q. On November 30, 1948, what were you doing?

A. I was employed on the Marsha Ann.

Q. As a fisherman? A. As a fisherman.

Q. Do you recall a collision that happened about 11:30 a.m. of that day? A. Yes, sir.

Q. And where were you before the collision occurred?

A. I was—as soon as we left the harbor, it got foggy, and I went up on the bridge.

The Court: Who else was on the bridge?

The Witness: The skipper.

Q. (By Mr. Callaway): Who was that?

A. Jack Borcich and Martin Zitko. Us three were on the bridge.

Q. Will you state, Mr. Tudor, when it was that you first saw the Bear?

A. Oh, I don't know; it was, I would say, close to us—the fog was thick—I would say 15 or 20 feet.

Q. And where was she at that time?

A. She was coming in towards the lighthouse.

Q. And how far were you outside the break-water at that [304] time?

A. Oh, I would say approximately half a mile or so.

(Testimony of Vincent Tudor.)

Q. And where was she, off your port or starboard?

A. Oh, she was off of our port bow.

Q. And was the Marsha Ann moving or standing still?

A. No, our engine was disengaged at the time.

Q. Was she moving in the water, or standing still?

A. Well, it could have been coasting, I wouldn't say it couldn't have been; but the engineer hollered—he was looking on the radar, and he hollers out that he sees a couple of boats on the screenhead there, then we disengaged the engine.

Q. How long had it been disengaged?

A. I would say—I don't know exactly, maybe five minutes or so.

Q. By the way, was the Bear moving or standing still? A. She was moving.

Q. And describe the movement, as far as you can, in your own words. Was she crossing your bow or headed into you, or what?

A. Well, she was coming toward—she came toward our port and crossing our bow.

Q. By the way, had you heard any whistle signal from the direction from which the Bear came?

A. Well, there was two or three boats at our bow, and [305] there was signals all over.

Q. Was your boat making any whistle signals?

A. Yes, we were giving about a signal every minute or so, approximately. When inside the breakwater, we gave one signal about every minute.

Q. I am not talking about what the condition of

(Testimony of Vincent Tudor.)

the inside of the breakwater was. I am talking about this five-minute interval when your engine had been disengaged.

A. Well, the skipper there was blowing on the whistle steady there, probably two whistles there at very short intervals when we got outside there.

Q. Tell us what happened.

A. Well, it happened so fast. We heard an engine; we didn't see no boat, we just heard an engine, and before we know it he was on us there, and the skipper hollered to him, "What the hell is the matter with you, are you crazy?" He hollered to the skipper of their boat; he was on the bridge.

And he swung hard to port, and the way he swung into port there, in addition, he just swung into our bow the way he swung to port.

Q. Then what happened?

A. The boat come alongside, and we grabbed lines right away. She was filling up with water, I guess, pretty fast. The fellows got excited over there, throwing clothes [306] on our boat.

We got some heavy lines and throwed them on and secured them on. I guess if we didn't do that she would have sank.

Q. Was there anybody stationed in the bow of the Marsha Ann at this time?

A. Yes, there was.

Q. Who was it? A. Steve Kuljis.

Q. How do you spell it, do you know?

A. I think it is K-u-g-l-i-s.

(Testimony of Vincent Tudor.)

Q. How much *disability* would you say that you had at that time?

A. Well, like I said, we couldn't see them until he was just about on us. The fog was that thick.

Mr. Shallenberger: I move to strike that answer as not responsive.

The Court: Objection overruled. That is about the only way he could describe the light, I guess. That is one way to describe it anyhow.

Q. (By Mr. Callaway): Were the running lights of the Marsha Ann on or off? A. On.

Q. Was there any forward motion to the Marsha Ann that you were aware of at all?

A. Well, like I said, it is pretty hard to [307] tell, a heavy boat like that, and in five minutes—I don't know, we might have been coasting or standing still, but the engines were disengaged. We disengaged them probably five minutes before that.

Q. What was the first thing that you knew of that apprised you of an approaching boat, when you saw it or anything else?

A. Well, we heard the engines at first.

Q. Well, when she hove into sight, was there any whistle signal given by the skipper of the Marsha Ann?

A. Pardon? I didn't get that.

Q. When she hove into sight, when you could see her—— A. Yes.

Q. ——was any whistle signal given by the Marsha Ann at that time, or do you remember?

A. I don't remember. When he hove into sight

(Testimony of Vincent Tudor.)

there everybody got excited, and you don't know what happens.

Q. Now, you say that just at the time of the accident, just before, you made a hard turn to the left or to the port?

A. No, I guess he must have seen the boat, or something, and come right onto it, and he turned hard over to the left, to the port there, and the way he turned to the port it just dug into our bow. Swung the boat a little, and he come alongside, like at our port side. [308]

Q. At any time did your boat push his boat hold in the water? A. I don't think so.

Mr. Callaway: You may cross-examine.

Cross-Examination

By Mr. Shallenberger:

Q. Mr. Tudor, about what time was it when you got into this dense fog?

A. Oh, I don't know. It was—we don't look very much at the clock there.

Q. Well, about how long was it before the collision that you got into this dense fog?

A. I really don't know.

Q. Well, was it a minute, or a half hour, or what?

A. Oh, I would say it must have been a half hour or better. I am not sure, though, I don't know.

Q. Was it an hour?

A. Well, when we left the harbor—as soon as we left the harbor, she wasn't too bad. When we

(Testimony of Vincent Tudor.)

got outside the fish harbor, well, she started to get foggy, started getting pretty thick.

Q. Started to get foggy as soon as you got out of the fish harbor?

A. Well, when we passed the fish harbor by the prison they used to have there—— [309]

Q. Yes.

A. ——Dead man's Island, or something.

Q. Yes? A. Yes.

Q. It started to get foggy then? A. Yes.

Q. And that was before you passed the light?

A. Oh, yes.

Q. Where is the radar located on the ship?

A. That is above the pilothouse.

Q. Well, where is the radar screen located?

A. In the pilothouse.

Q. And were you watching the radar screen yourself?

A. No. The engineer was watching it.

Q. And do you keep any log of what you see on the radar screen?

A. I think—I am not sure whether the chief kept a log or not. He usually looked at the screen there.

Q. What were you doing on the pilothouse, Mr. Tudor?

A. Well, I have been shipwrecked a couple of times and I am kind of leery when it gets foggy, and I go up there; and the chief is inside, and he hollers out to us whether there is any boats on the

(Testimony of Vincent Tudor.)

bow or on the left, and we usually relay over to Jack.

Q. Were you in the pilothouse or were you out on the [310] bridge?

A. No, I was right out on the bridge there.

Q. Will you indicate on this model, to me, where you were on the bridge, Mr. Tudor?

A. I was right here (indicating), and we usually leave this window open here, so when Bert, the chief, hollers out, we can hear, because the door is over here (indicating).

Q. Yes?

A. We usually leave this window open so we can relay to Jack on the wheel.

Q. So you were on the port side, pretty well forward on the flying bridge?

A. Yes, right here (indicating). Here is the window, too, pretty close. I leaned against the window there.

Q. Now, did you hear the chief holler out about the two boats on the radar screen?

A. Yes. The chief is always——

Q. What did he say?

A. He says, I think, there was two or three boat we picked upon the screen.

Q. Well, what else did he say, if anything?

A. Well, he tells us about how far off they are, or a quarter off the bow, or usually tells us how far away they are.

Q. What did he say about them in this [311] case?

(Testimony of Vincent Tudor.)

A. I think he told us there was supposed to have been two boats on our port and one on our starboard; and as soon as he told us that, Jack disengaged the engines.

Q. Did he give you any bearing, where these boats were?

A. Yes, he usually tells us how far off they are, so many degrees off the bow.

Q. Do you recall what he said in this case?

A. No.

Q. You don't recall what he said?

A. I don't recall how many degrees off the port side he said.

Q. Do you recall whether he gave any estimate of the distance?

A. Yes. I think he said they were three or four hundred yards off, or five hundred yards off of bow, our port side. I think one boat was off our starboard bow.

The Court: Who do you mean by the chief, Jack Borcich?

The Witness: No, Bert Zankich.

The Court: The chief what?

Mr. Callaway: Chief engineer.

The Witness: Chief engineer.

Q. (By Mr. Shallenberger): Now, then, did you have any more reports from the chief before this collision occurred?

A. Well, as soon as we got outside the breakwater, he [312] picked her up on the radar and said

(Testimony of Vincent Tudor.)

we were so far off of it. We were going to take a course to head down east, southeast.

Q. Well, did he pick up these vessels on the starboard bow and port bow before you got out of the breakwater?

A. Oh, I would say they were probably—we were abreast of the breakwater, probably, the light-house, when we picked them up.

Q. I see. Then did he say anything between that time, give any reports between that time and the time of the collision?

A. No. Just when he said there was—I think there was two or three boats off our bow, I think one off on the starboard; and two on the port, and then he said something—he told Jack, and then Jack disengaged the engine.

Q. And you didn't hear any more reports from the chief from that time on?

A. Well, as a boat gets in so——

Q. Just answer. Were there or weren't there?

A. Well, I don't think so, after they were inside——

Mr. Shallenberger: That is all.

Mr. Callaway: Let him finish. Don't stop him. State what you were going to say.

Mr. Shallenberger: That answers the question.

The Witness: I was going to say, you can pick them up [313] on the screen, and when they get so close you can't pick them up any more.

Q. (By Mr. Shallenberger): Now, then, at the time you came out past the light and the break-

(Testimony of Vincent Tudor.)

water, were you in the position that you have indicated on the flying bridge?

A. I was about the same spot.

Q. Did you remain in that spot until the time of the collision? A. Yes.

Q. When you first saw the Bear, what did you do, you personally?

A. We started hollering, and I hung on. It appeared it was so close that it didn't look like you could get away from being a collision, and I just hung on, just braced myself.

Q. You started hollering, you say?

A. Yes, we started hollering.

Q. What did you holler?

A. Oh, I don't know. We got all excited there. "What the hell is the matter with you guys?" or something, I don't know.

The Court: Did you say that?

The Witness: I am not sure. We got so excited there we were hollering, "You crazy guys," or something, I don't know.

The Court: Did you say that? [314]

The Witness: I am not sure. See, we got so excited, we were hollering, and the skipper had told the other skipper—I personally heard him say, "What the hell is the matter with you? Are you crazy, you damned fool." Just like that he told him.

Q. (By Mr. Shallenberger): Where were you headed for, Mr. Tudor?

A. Well, we were going to head, I believe, down Oceanside.

(Testimony of Vincent Tudor.)

Q. Do you know whether there were any weather reports as to the condition of the weather in the direction of Oceanside?

A. No, I don't.

Q. You had a sending and receiving set, of course, on the Marsha Ann, did you not?

A. Yes.

Q. A ship-to-shore phone?

Mr. Callaway: Answer out loud.

The Witness: Yes, sir.

Q. (By Mr. Shallenberger): Now, then, Mr. Tudor, will you state to me, if you can, how fast the Bear appeared to be going when you first saw it?

A. Well, that is pretty hard to say. I would say he was going maybe four or five knots. It is pretty hard to tell exactly.

Q. How far did he continue at that speed? [315]

A. Well, when he hit us he didn't continue any more. The way he swung hard over on the left there and just ran into us——

Q. In other words——

A. ——it happened so fast.

Q. ——he kept going at the same speed?

A. He was going, I would say, four to five knots when he hit us.

Q. And did he maintain the same course until the time he hit you?

A. No, he swung hard over to the left.

Q. And how close was he to you when he swung hard over to the left?

(Testimony of Vincent Tudor.)

A. He was right next to us.

Q. Well, how close was that?

A. That is hard to say.

Q. One foot?

A. Oh, it was more than that. I would say——

Q. 40 feet?

A. I would say maybe right on us, just about. Say 10 feet, or something, we started hollering; 15 feet or so. It takes a little time to swing a boat over. You can't turn a boat right around on——

Q. Did you see anybody on the pilothouse of the Bear? [316]

A. The only fellow I seen up there was the skipper.

Q. Who was that? A. Milosevich.

Q. Did you see anybody else there?

A. No, I didn't see nobody else.

Q. Did you know it was Milosevich at the time, or did you later find out it was?

A. No, I knew it was him. I had seen him before.

Q. You recognized him? A. Yes.

Q. Now, did you see Milosevich do anything?

A. Well, when Jack Borcich hollered at him, he didn't say a word.

Q. Well, was that before the collision or afterwards? A. That was after the collision.

Q. Before the collision did you see Milosevich do anything?

A. Yes, he was on the wheel. He swung over hard to port.

(Testimony of Vincent Tudor.)

Q. You saw him do that?

A. He must have. He was the only one up there. We had hit right when that happened. He was the only one up there.

Q. You saw the boat go to port. Did you see Milosevich turn the wheel hard to port? [317]

A. He must have.

Q. Did you see him? A. Yes, I saw him.

Q. You saw Milosevich, with his hands on the wheel, turn hard to port; is that it?

A. Yes, I saw him.

Q. You saw him? A. Yes.

Q. Where was the Bear when you saw Milosevich do that?

A. The Bear was right on us, you might say, maybe 10 feet away.

Q. When you saw Milosevich turn the wheel hard?

A. Turn it hard over; because as soon as it happened it hit. I seen it hit right there. Jack hol-
lered to him, and it hit just when that happened.

Mr. Shallenberger: That is all.

Mr. Callaway: That is all. May this witness be excused?

The Court: Yes, you may be excused.

(Witness excused.) [318]

JACK BORCICH

one of the respondents, called as a witness by the respondents, having been first duly sworn, was examined and testified as follows:

(Testimony of Jack Borcich.)

The Clerk: What is your name?

The Witness: Jack Borcich.

Direct Examination

By Mr. Callaway:

Q. Where do you reside, Mr. Borcich?

A. San Pedro.

Q. What is your business or occupation?

A. Fisherman, skipper of the boat Marsha Ann.

Q. How long have you been skipper of the Marsha Ann? A. For three years now.

Q. Beg pardon? A. Three years.

Q. And how long have you been engaged in commercial fishing? A. 20 years.

Q. How long have you been a skipper of a commercial fishing vessel? A. Since 1936.

Q. Now, first of all, will you tell us the height of the bow of the Marsha Ann from the water line?

A. From the water line to the top, it is about 17½ [319] feet to 18 feet.

Q. And how long is the Marsha Ann?

A. The Marsha Ann is 97 feet long and 24 feet deep and 4 inches.

Q. And what did you have aboard her at the time?

A. 100 ton of water for a ballast, and 5,000 gallons of fuel to use in fishing operations.

Mr. Shallenberger: I didn't get that.

Mr. Callaway: 5,000 gallons of fuel.

Q. (By Mr. Callaway): How much would you

(Testimony of Jack Borcich.)

say she weighed over-all at the time of this collision?

A. It is hard to estimate, but around—my estimate is she weighed around three hundred sixty to seventy tons, I don't know.

Q. Do you recall a collision she had on November 30, 1948, with the Bear? A. I was there.

Q. And where were you on the boat at the time of the collision? A. At the wheel.

Q. Where had you come from?

A. Came from Fish Harbor, to proceed to fishing ground. Just more or less find the fish.

Mr. Shallenberger: Can I have that answer again?

(The answer was read.) [320]

Mr. Shallenberger: Jack, I can't hear you.

The Witness: O.K.

Q. (By Mr. Callaway): Well, as you left Fish Harbor, did you proceed on out the main channel to the breakwater? A. Yes, we did.

Q. How far out of the breakwater were you when this incident happened?

A. We was 600 feet.

Q. At what point on the compass were you headed? A. Southeast.

Q. Was it foggy? A. It was really foggy.

Q. When did you first encounter the fog?

A. We was between the Fish Harbor and the breakwater, and before we got to the fog I called out for the chief to put the radar on.

(Testimony of Jack Borcich.)

Q. Well, prior to the occasion in question, had you had any radar report—— A. Yes.

Q. ——as to the presence of any vessels?

A. Yes, we did.

Q. And when did you get that?

A. When we left the breakwater, we got the—I got a report from the chief just about constantly. He was saying boats are there and boats are [321] there.

To the port he told us there is two boats to the port, and one to the starboard; so when we got out—and, in fact, he told me this, that one boat are kind of changing the course. He is not in a straight course. So I stop.

Q. Did he tell you, prior to the time you stopped, that he had lost this boat on his radar?

A. No, he just was going to go away from the radar screen.

Q. In other words, the boat that he saw was just going away from the radar screen?

A. When I disengaged the engine.

Mr. Shallenberger: Just a minute. May I have the last two or three questions and answers?

(The record was read by the reporter.)

Q. (By Mr. Callaway): Explain what you mean by that, will you?

A. I mean this, I stop the engine completely.

Q. What did you mean about the boat going away from the radar screen?

Mr. Shallenberger: Just a minute. I object to

(Testimony of Jack Borcich.)

that as something not in evidence, and he didn't so testify.

Mr. Callaway: I think that is what he said.

The Witness: No, the boat went away from the radar screen.

The Court: Objection overruled. [322]

Q. (By Mr. Callaway): What did you mean by that?

A. I mean by that when the boat get inside 200 yard on our screen we can't see it no more. Inside 200 yard—up to 200 feet we can keep——

The Court: 200 feet or 200 yards?

The Witness: 200 yards.

The Court: You used both figures; which do you mean?

The Witness: 200 yards.

Q. (By Mr. Callaway): Now, in other words, the radar takes them up beyond a circle of 200 yards?

A. That is right.

Q. Well, when you stopped your engine, disengaged your engine, how fast were you traveling?

A. Well, we just had the engine engaged, but we didn't raise the speed on any controls, because I was right there and I don't let anybody turn the controls when I am in a fog, or whistle. I always keep doing that; that is my job.

Q. I say, how fast were you traveling when you disengaged the motor?

A. Not more than, I would say, mile or mile and a half.

(Testimony of Jack Borcich.)

Q. And how long were your motors disengaged before the collision happened?

A. Well, I would say from six to seven minutes. I really didn't take the time down, but around six minutes. [323]

Q. And during that interval of time, did you hear any whistles from other boats?

A. Oh, yes.

Q. Beg pardon? A. Yes, I did.

Q. Were you making any signals yourself?

A. Yes, I did. I always did.

Q. Well, what signals were you giving within the five or six minutes that you had disengaged your engine?

A. I was giving two signals. Each signal was for four to six seconds, and one second in between, and not longer than a minute and a half apart.

Q. And immediately before you sighted the Bear, did you hear any signal given in the direction from which she came?

A. Yes, I did, but not proper signal.

Q. What did you hear?

A. I heard just like a car horn.

Q. Like what? A. Like a car whistle.

Q. Well, what was the signal?

A. Like this, "Beep, beep," that is all I heard.

Q. How far was the Bear—wait a minute before I ask you that. Had Zankich here given you the bearings of these three boats you described, two off your port and one off your [324] starboard?

A. Yes.

(Testimony of Jack Borcich.)

Q. Do you remember what the hearings were?

A. The one going out of the screen, he told me, was 45 degrees off the port bow; and the next one, that he had it in the screen all the time, it was 45 degrees off our port bow; and one off the starboard bow.

Q. All right; where was the Bear when you first cited it?

A. When I saw it with my own eyes?

Q. Yes.

A. Well, as far as from here to Bortul Zankich.

Q. From where you are to Zankich?

A. That is right.

Mr. Callaway: I suppose, for the record, we can stipulate that is about 25 feet?

Mr. Shallenberger: No, I think it is longer than that.

Mr. Callaway: I get seven steps; you try it, Dave.

Mr. Fall: 21 feet; seven steps.

Mr. Callaway: That is what I got.

Mr. Fall: About 21 feet.

Q. (By Mr. Callaway): Now, before you saw it as far from you as Mr. Zankich, and heard this signal that you heard, did you have any other warning of an approaching vessel from that [325] direction?

A. Yes, I have.

Q. What was it?

A. I heard boat to the port of us and boat to the starboard of us, the whistles.

(Testimony of Jack Borcich.)

Q. Did you have any warning of the approach of the Bear?

A. No, I didn't. I give them four whistles, the danger whistle that we are there, because we are so close that the last whistle I gave them, that was at the time of the impact.

Q. When did you start to give these whistles, before you actually saw them there, or after you saw them? A. As soon as I saw them.

Q. As soon as you saw them. At that time, what was her position?

A. Her position was 45 degrees off our bow, just like this (indicating). This (indicating) is Marsha Ann; and he was coming 45 degrees off our bow. I would like to have the boat.

Q. All right, I will get you the boat.

We will assume that that is southeast.

A. All right. He came just like this (indicating) about 45 degrees, about like that.

Q. Do the captains——

The Court: Just a minute. Is that the way you want the [326] boats when you first saw the Bear?

The Witness: No. When I saw it it was a little farther away, like about that (indicating). Just about like that.

The Court: Now, you got the Bear pointing just a little bit off your bow; is that it?

The Witness: That is right, just a little bit off our bow.

The Court: He has placed the Bear, by the use of the model boats, as being about 45 degrees off

(Testimony of Jack Borcich.)

his port side, and heading on a line which would just pass by the bow of the Marsha Ann but not actually clear the Marsha Ann.

Mr. Callaway: That is right.

The Court: And what was the distance between the two bows at that time?

The Witness: When I saw them?

The Court: Yes.

The Witness: I saw them just from here to where Zankich is at.

The Court: That was the distance between the bows?

The Witness: Yes.

The Court: Not the distance to where you were on the bridge?

The Witness: Just about the same. If I measure from here to here (indicating), it might be couple of feet longer than the other way, if I took a measurement. [327]

Q. (By Mr. Callaway): How far could you see under those particular circumstances, in the fog?

A. Not too far. That is about the farthest I could see.

Q. In other words, you think you saw the Bear as soon as you could see it under the conditions of visibility?

A. That is right, yes, sir.

Q. Well, what happened after you saw her? The minute you saw her you gave the four short blasts?

A. That is right.

Q. And as you were giving the last one, the collision happened?

A. That is right.

(Testimony of Jack Borcich.)

Q. Then what else happened?

A. Well, it bear—what happen? He just turned hard over to the left, and he piled himself on us. That is all I can say.

Q. Was there any forward movement of the Marsha Ann at that time?

A. Well, that would be hard to really—there might have been, on still water, a movement. If the tide would taken it, that is about all. I would say in still water, pretty close in the still water.

Q. In other words, if there was any forward move it was due to the drift? [328]

A. That is right.

Q. Now, what part of the Bear and what part of the other boat came into contact on collision?

A. Well, he started just touching us when he got about this green light, I would say, then he start to swinging hard over; and that is when there really came the impact, when he swung it over.

I don't know if he pulled the engine to speed up or not, but it sounds to me like he did.

Q. Did you say anything to the skipper? Did you see the skipper? By the time of the impact, could you see the skipper on the bridge of the other boat?

A. Well, I seen the skipper, and I told him, "What the hell the matter with you, going in a fog like this, at this speed?"

He didn't answer me one word, just like he was stung, that is all.

Q. How fast do you think he was going?

(Testimony of Jack Borcich.)

A. Well, by the time—by the time he made—he was going pretty fast. I would say he was going 7 miles an hour.

Q. Well, did he ever have any other conversation with you about taking the boat in?

A. I just told him to back up a little bit, so they can come alongside of us, and he did, and we put lines on them, [329] using the 6-inch lines we had when we tie up in rough—like in San Francisco, when there is a big tide, we use those kind of lines. When there is a big surge, we have to use awfully big lines on that boat.

Q. What I am getting at is, during this time you were tying him up, and after you got into Van Camp's Cannery, did he ever discuss the accident, whose fault it was?

A. He wouldn't even talk to me. Just like I murder whole San Pedro, they wouldn't even talk to me. That is the way he act to me.

Q. What did the crew do?

A. Of his boat?

Q. Of the Bear.

A. Well, Bogdanovich, I never saw a man panicky so bad in my life.

Q. Let me ask you this: Did he come over, with a bound, into your bow, Bogdanovich?

A. I don't know, but you have to be a genius to get on top of our bow from this boat.

Q. How much distance is there?

A. About 16 or 17 feet.

(Testimony of Jack Borcich.)

Q. On the back side—or I take it that the entire boat is higher than the Bear, is that right?

A. Oh, yes.

Q. What did you do, throw them lines, or [330] what?

A. We throw them lines, and he back up, and this fellow they said he got up over the bow, he was so panicky he lost a pair of pants between the boats, and he was jumping on the boat. He didn't even help us pull the lines on the Marsha Ann.

Q. Let me ask you this: Regardless of that, did you start up your engine then? I mean, did you engage your engine to come alongside the Bear?

A. No, my engine was stopped all the time. All the time, by the time we tie him up and secure him, and then when I saw that everything was secured then I started up.

Q. How long were you there between the time that you had first stopped or disengaged your engine, until you finally left, towing the Bear?

A. It couldn't be over 10, 12 minutes. I doubt if it was over that, because when we was tying the boat, I don't think it took over five minutes to tie up the boat.

Q. Now, what was the condition of your running lights?

A. Well, my running lights was on, and the mast light was on.

Q. Did you ever tell us who was on the bridge with you?

A. Vincent Tudor and Zitko, Martin.

(Testimony of Jack Borcich.)

Q. Sitko?

A. He spells it with a "Z." [331]

Mr. Rothke: Who was the first one?

Mr. Callaway: Vincent Tudor.

Mr. Roethke: And the second, Zitko?

The Witness: And the chief was on the radar; the chief is Bortul Zankich.

Q. (By Mr. Callaway): Did you have anybody stationed on the bow at the time?

A. Yes, I have Steve Kuljis on the bow.

Q. Anybody else stationed on the boat anywhere?

A. No. I was on the pilothouse with those two fellows, and Steve Kuljis was on the bow, and that is all it requires.

Q. Now, let me ask you, did Zankich here leave the radar, to your knowledge, at any time after you left the breakwater?

A. No, he never do that, unless it is a clear day. When I tell him to put the radar on, he never leave that place. He stays there constantly.

Q. Now, what direction were you outside the breakwater?

A. We was southeast of the breakwater.

Q. I believe you said six or seven hundred feet, or yards?

A. Six hundred feet, not yards. Because we picked up the lighthouse in our radar screen, just on the edge of the radar, and that's 200 yards, that what we pick up, the [332] lighthouse. The breakwater we still——

(Testimony of Jack Borcich.)

Q. What was the rest of the crew doing, do you know? A. You mean on our boat?

Q. Yes, during the time that you were waiting there?

A. Well, some of them was changing clothes inside the pilothouse, and one fellow was down in the hatch washing the hatch—two of them, in fact—and some of them were around the deck.

Q. Had you just brought in a load of fish?

A. That is right. They was washing the hatch.

Mr. Callaway: I think that is all, your Honor.

The Court: Well, it is after 4:00 o'clock. We will take our adjournment.

We will conclude this case tomorrow, will we, your argument and all?

Mr. Callaway: I anticipate so, your Honor.

The Court: Very well.

The court stands adjourned.

The Clerk: At 10:00 o'clock tomorrow?

The Court: 10:00 o'clock.

(Whereupon, at 4:05 o'clock p.m., December 13, 1949, an adjournment was taken until 10:00 o'clock a.m., December 14, 1950.) [333]

Wednesday, December 14, 1949—10:00 A.M.

The Clerk: No. 8960-C Admiralty, Ancich v. "Marsha Ann," further trial.

Mr. Callaway: Ready, your Honor.

Mr. Shallenberger: Ready.

The Court: Had you completed your direct, or do you have any other questions?

Mr. Callaway: I had completed.

JACK BORCICH

called as a witness by and on behalf of respondents, having been previously duly sworn, was examined and testified further as follows:

Cross-Examination

By Mr. Shallenberger:

Q. What is the stem piece of the Marsha Ann constructed of? A. It is constructed of fir.

Q. That is Douglas fir? A. That's right.

Q. Would you hand that boat over? Now, then, the planking on the Marsha Ann—that is the sides—— A. That's right.

Q. ——that runs longitudinally, the same direction as the Marsha Ann, doesn't it? [336]

A. Yes.

Q. And the stem piece runs vertically, up and down, does it not? A. That's right.

Q. Is that stem piece one solid piece or is it more than one piece?

A. It was one solid piece.

Q. Is there a stem iron on the outside?

A. Yes, three by three.

Q. Now, then, the Douglas fir in the stem piece, how far back does that run?

A. That runs behind the planking. I really don't know how much in inches, but it runs quite a bit there.

(Testimony of Jack Borcich.)

Mr. Callaway: I think the photograph shows it, Mr. Shallenberger.

Q. (By Mr. Shallenberger): How is that stem piece fastened, do you know?

A. That stem piece is fastened with planking, nailed on that stem piece, and then you got another piece on the inside, twelve-by-twelve timber, for to fasten the bow stem to that, and that is bolted on both sides, right through the stem.

Q. Now, then, Mr. Borcich, you had just finished unloading fish prior to the time when you left on this trip? A. Yes. [337]

Q. And what time had you finished unloading fish, Mr. Borcich?

A. Oh, I would say about 10:00 o'clock.

Q. And you immediately put to sea after you finished unloading? A. That's right.

Q. Now, then, what time, Mr. Borcich, had you arrived in port with that load of fish?

A. I think we arrived about 7:00 o'clock in the morning, if I am not mistaken.

Q. About 7:00 o'clock in the morning?

A. Yes. I am not sure.

Q. Where had you come from?

A. We came from Oceanside.

Q. You were going back to Oceanside on this trip, is that right? A. That's right.

Q. Now, then, Mr. Borcich, when you came up from Oceanside that morning, did you encounter any fog? A. No.

(Testimony of Jack Borcich.)

Q. No fog? A. No.

Q. At any time on the trip up from Oceanside that morning? A. No. [338]

Q. No fog outside of the harbor? A. No.

Q. No fog inside? A. No, no place.

Q. Where did you unload the fish, Mr. Borcich?

A. French Sardine No. 1.

Q. French Sardine? A. No. 1.

Q. Now, then, Mr. Borcich, when you left French Sardine at around 10:00 o'clock in the morning, was there any fog?

A. When we left the Fish Harbor, that is, about the middle of the bay, it started to get foggy.

Q. About the middle of the bay?

A. That's right.

Q. You mean about half way between Fish Harbor and the breakwater?

A. That's right.

The Court: Can we stipulate how far Fish Harbor is from the lighthouse and the breakwater?

The Witness: Three miles.

Mr. Shallenberger: I think this chart will show it.

The Witness: I think it is about three miles.

Mr. Shallenberger: I would say that is approximately right, three miles. It isn't over that, I am sure.

The Court: Where is Fish Harbor on this map? [339]

The Witness: Right there.

(Testimony of Jack Borcich.)

Mr. Shallenberger: This is Fish Harbor, your Honor, and this is the entrance to the breakwater.

The Witness: I think it is three miles.

The Court: Do you have a ruler there? Where is the scale?

The Witness: Over here.

Mr. Shallenberger: It is about four miles.

The Witness: Two miles.

The Court: One mile and three-quarters.

Mr. Shallenberger: Yes, approximately two miles.

Q. Now, then, you encountered this fog about half way from Fish Harbor to the breakwater?

A. That's right.

Q. Did the fog increase in density from there on? A. Yes.

Q. And the density of the fog increased very rapidly, didn't it, from there on?

A. That is right.

Q. Now, then, did you make any inquiry, Mr. Borcich, of any kind to determine what the weather was outside of the breakwater? A. No.

Q. As you approached the breakwater, the man operating your radar and watching the screen reported a number of boats, [340] did he not?

A. He did.

Q. In fact, if I remember your testimony correctly, you stated he was constantly reporting boats, is that correct? A. Yes, sir.

Q. Who is the man who was making the reports to you? A. Bortul Zankich.

(Testimony of Jack Borcich.)

Q. That is your partner on the boat, the man sitting here at the counsel table?

A. That's right.

Q. What kind of radar set do you have on the Marcia Ann? A. We have a surplus job.

Q. A surplus one? A. Yes.

Q. Purchased from the United States Government? A. Yes, sir.

Q. What type is it? How do you describe it?

A. You mean how does it look?

Q. No. What type of set is it? Those sets have numbers, do they not, showing the model of set that it is? A. That's right. It is a——

Q. Was this an SO-1?

A. I don't think so. I know the make, but I can't think right offhand what the name is. [341]

The Court: Keep your voice up a little bit.

The Witness: I know the name of the set, but I can't really think of the name right now.

Q. (By Mr. Shallenberger): What kind of engine do you have on your vessel, Mr. Borcich?

A. 400-horse Atlas.

Q. 400-horse Atlas? A. Yes.

Q. Is that a direct reversible engine?

A. That is a direct reversible, without no clutch.

Q. What do you do when you are going ahead and you wish to reverse your engine?

A. You stop the engine, and then you have to put it in the reverse.

The Court: You stop the engine?

(Testimony of Jack Borcich.)

The Witness: You stop the engine. You stop the engine completely.

Q. (By Mr. Shallenberger): Then you have to put it in the reverse and start the engine again?

A. That's right.

Q. If you are going forward and you wish to leave the engine running, by disengaging it from the shaft, what do you do? A. You can't do it.

Q. What is that? [342]

A. You can't do it. You have to stop the engine.

Q. You have to stop the engine?

A. That's right.

Q. Then what do you do? A. She stops.

Q. You stand still; you start it up again, or what do you do? A. You have to start the engine.

Q. You start the engine? A. Yes.

Q. And then you start forward again?

A. That's right.

Q. Mr. Borcich, you reported two vessels off the port bow, at a bearing of 45 degrees on your port bow. Who gave you that report?

A. The chief engineer.

Q. Did he take the bearings, also?

A. He knows the bearing, exactly where the boat stands.

The Court: From the radar?

The Witness: That's right.

Q. (By Mr. Shallenberger): Now, then, does he also know the range from the radar?

A. Yes, sir.

Q. Did he report to you what the range was?

(Testimony of Jack Borcich.)

A. Yes. [343]

Q. What was it?

A. When he reported to me what range it was, they was about 700 feet away, and then I stopped the engine.

Q. Now, then, at that time you were still inside the breakwater, is that right?

A. No. We was approaching the breakwater.

Q. But you were approaching it from inside, in the harbor, weren't you?

A. Which?

Q. What?

A. I did not get that right.

Q. When the chief gave you this bearing and range of these vessels on your starboard, you were still inside the breakwater, were you not?

A. Yes. When we saw the boats, yes.

Q. You were still inside the breakwater?

A. Yes.

Q. And that is when you stopped your engine, isn't it?

A. That's right. No, no. Oh, no, no. I did not stop the engine then, no.

Q. I thought you said you stopped the engine when he told you they were 700 feet off.

A. No. I misunderstood that.

Q. All right. When did you stop your engine?

A. When we was—we stopped our engine about, oh, I [344] would say about 600 feet away from the breakwater outside.

Q. About 600 feet outside the breakwater is when you stopped your engine?

(Testimony of Jack Borcich.)

A. That's right. About southeast of the breakwater.

Q. Now, then, Mr. Borcich, when you left Fish Harbor, what course were you proceeding on?

A. When I left Fish Harbor, we were proceeding southeast, one-quarter east.

Q. Southeast, one-quarter east? A. Yes.

Q. Did you change that heading any before reaching the breakwater? A. No.

Q. At what speed were you going when you left French Sardine?

A. When we left French Sardine, we was going slow.

Q. Well, how slow were you going?

A. I would say it was two miles an hour.

Q. Two miles an hour? A. Yes.

Q. Did you change that speed any before you got to the breakwater?

A. Yes. We stopped at least ten times.

Q. You stopped at least ten times?

A. That's right. [345]

Q. Why?

A. Because fog was awful thick and the boats was coming in from the fishing grounds.

Q. In other words, it was about the time of morning when you could expect a lot of boats coming in from the fishing grounds, wasn't it?

A. Yes.

Q. Now, then, when you would start up again after these stops, at what speed would you travel?

A. Oh, I wouldn't say more than a mile.

(Testimony of Jack Borcich.)

Q. You would say what? A. About a mile.

Q. In other words, you traveled about two miles an hour, that is nautical miles per hour, is it?

A. Until it got foggy, yes.

Q. Until you made the first stop?

A. That's right.

Q. And then you made about ten stops?

A. That's right.

Q. And each time when you started up you proceeded at about a mile an hour?

A. That's right.

Q. Now, then, when you first saw the Bear, I believe you state that you gave four short whistles, is that right? A. That's right. [346]

Q. Who gave those whistles? A. I did.

Q. You did personally? A. Yes.

Q. Did you do anything else? A. No.

Q. Did anyone else do anything else on your vessel?

A. I just hollered, but there wasn't anything that you could do.

Q. But did anyone else on your vessel try to do anything else? A. Just holler, that's all.

Q. All right. You didn't direct anyone else on your vessel to do anything, either, did you Mr. Borcich? A. No.

Q. Now, then, from the time that you first saw the Bear to the time of the impact of the two vessels together, how long was that?

A. From the first time we saw it on the screen, or by eye?

(Testimony of Jack Borcich.)

Q. The first time you saw it by eye.

A. Well, it was just right now, that is about all. There wasn't more than just a few seconds. That's all. I couldn't tell you.

Q. Well, have you any opinion as to how many seconds? [347]

A. I would say not more than two seconds, because I couldn't say.

Q. Not more than two seconds?

A. That's right.

Q. How long was it from the time that you first saw the vessels, or the chief first reported the vessels on your starboard bow from the radar screen until the time when you saw the Bear with your eye?

A. Oh, I would say—we would see the boats two or three miles from us when we was approaching the breakwater, but when we got out 600 feet from the breakwater, that was pretty darn close to us then. They just was getting away, and he told me that one boat is not in a straight course.

Q. No. Just a minute, Mr. Borcich. My question was: From the time that Mr. Zankich reported to you that there were two boats off your starboard bow and one boat off your port bow, how long was it from that first report until the time that you saw the Bear?

A. Well, I would say 25 minutes.

Q. 25 minutes? A. 20 to 25 minutes.

Q. Now, then, Mr. Borcich, after that first report, when you received the next report, if any, with regard to these vessels, when was that?

(Testimony of Jack Borcich.)

A. I received a report just about every [348] minute.

Q. Just about every minute?

A. That's right.

Q. What were those reports?

A. Those reports was how many boats he saw and what direction they are from us.

Q. Tell me what he told you.

A. He says, "There is two boats on the port and one on the starboard."

Q. Yes. A. To watch.

Q. He gave you another report the next minute. What was it?

A. That we getting—that they getting closer to us.

Q. The next minute, what report did he give you?

A. That they still coming closer to us and one of them is not in a straight course.

Q. How long after the first report that he gave you was it that he gave you the report that one of them was not on a straight course?

A. How long from the first report?

Q. Yes.

A. Oh, I would say about five or ten minutes.

Q. About five or ten minutes. Now, then, did he tell you which boat it was that was not on a straight course?

A. Well, we can't read the name, which one it is. [349]

(Testimony of Jack Borcich.)

Q. I realize that, but he had been reporting progress of various boats. Did he say which boat it was, what boats he had been reporting?

A. The one approaching in a straight 45-degree, that is one—one was crossing 45 degrees back to our port, well in sight of us, and one was coming straight at us.

Q. Which one of them was it that changed course?

A. The one that was outside of us.

Q. And did he report again on that vessel?

A. Yes, he did.

Q. How long after the report that it changed course did he report again on that vessel?

A. Well, then, at that time he says, "It is getting close to go away from out of sight."

Q. When was that report?

A. That was a report when we was stopped.

Q. Between the time when he told you that the vessel started to change course and this time, he made no reports as to the course of that vessel, did he?

A. I did not get the question.

Mr. Shallenberger: Will you read the question, Mr. Reporter?

(The question was read by the reporter.)

The Witness: No. He did 45 degrees off of the bow.

Q. (By Mr. Shallenberger): Well, he reported to you [350] that the vessel changed course, this one vessel appeared to be changing course?

A. That's right.

(Testimony of Jack Borcich.)

Q. But he made no more reports with regard to that vessel until you were stopped, and he made the report that the vessel was about to go off the screen, isn't that right?

A. Yes. I was at the stop, and he said—when he told me that the boat that was on the starboard is getting close, then I stopped.

Q. At the time you stopped, what was your course, Mr. Borcich? A. Southeast.

Q. Do you remember the compass heading?

A. You mean on the compass?

Q. Yes. A. Southeast.

Q. Do you remember it in degrees?

A. It is one hundred—around 140.

Q. Were you headed—

A. It is 140.

Q. Was that what your compass read? Was that what you were steering prior to the time you stopped? A. Yes, southeast, or 140 degrees.

Q. Still I want to know, Mr. Borcich, were you watching your compass and was that the course that you were steering? [351] A. That's right.

Q. 140 degrees on your compass?

A. That's right.

Q. Is that 140 degrees true?

A. 140 degrees on the compass, that is true, yes.

Q. That is 140 degrees true?

A. That's right.

Q. And not magnetic?

A. No. That is 140 degrees on the compass.

(Testimony of Jack Borcich.)

Q. You know the difference between 140 magnetic and 140 degrees true, don't you?

A. That's right.

Q. What is the difference?

A. It is 140 degrees true.

Q. In other words, if you headed on your compass at 140 degrees, that is 140 degrees true?

A. That's right.

The Court: Is the compass magnetic? Well, go ahead.

The Witness: It is.

Q. (By Mr. Shallenberger): What would be 140 degrees magnetic on your compass?

A. 140 degrees magnetic is southeast. That is what I was going.

Q. And there is no difference on your compass between 140 degrees magnetic and 140 degrees true, is that right? [352]

A. Well, I don't understand that word, to tell the truth. What do you mean? If I say I am going 140 degrees magnetic, I am going southeast. That is the way I can figure it out, but I got——

The Court: Are you through with that subject-matter?

Mr. Shallenberger: Yes.

The Court: I don't like to interrupt.

Mr. Shallenberger: Go ahead.

The Court: You have got a compass on your boat?

The Witness: Yes.

The Court: A magnetic compass?

(Testimony of Jack Borcich.)

The Witness: Yes.

The Court: As you were steering this course, you were watching the needle on the compass?

The Witness: It is——

The Court: Were you watching the needle on the compass?

The Witness: That's right.

The Court: And the needle was pointing to 140 degrees?

The Witness: That's right.

The Court: As shown on the dial of your compass?

The Witness: That's right.

The Court: Then you were steering a magnetic course, 140 degrees magnetic?

The Witness: 140 degrees magnetic, yes.

The Court: How many degrees off would be the true course [353] of 140?

The Witness: It is 140—how much is like when we take the course, it says on chart how many variation——

Mr. Callaway: Speak up. We can't hear you.

The Witness: How many deviations you got on your compass, that many is true.

The Court: How much deviation is there on your compass?

The Witness: There is no deviation on the compass, but I mean when you are making a course, you say 140 degrees magnetic, but if you are not going—if you took a course——

Mr. Shallenberger: I can't hear you.

(Testimony of Jack Borcich.)

The Witness: If you take a course and on the chart it says "15 degrees deviation," you have to take that 15 degrees deviation, and then that is what it is.

The Court: Isn't there a fixed deviation in this area from the magnetic reading to the true reading? Isn't that fixed?

The Witness: On the compass?

The Court: On all compasses.

The Witness: Yes, the compass. Our compass was checked just about, I would say, six months before.

The Court: What is the deviation?

The Witness: There was no deviation on the compass.

The Court: You are talking about a different thing. You mean checking your compass? [354]

The Witness: That's right.

The Court: From true, magnetic reading?

The Witness: That's right.

The Court: And it was correct?

The Witness: That's right.

The Court: But isn't there a fixed deviation in this area around San Pedro Harbor, so the reading of a magnetic compass is not a true reading?

The Witness: That's right.

The Court: And what is that?

The Witness: 15 degrees deviation.

The Court: 15 degrees deviation. All right.

Q. (By Mr. Shallenberger): Well, now, is that deviation or variation? A. Variation.

(Testimony of Jack Borcich.)

Q. The first thing is variation, is it not?

A. Variation, yes, that's right.

The Court: And if a magnetic compass is out of adjustment, that is what you call deviation, is that right?

Mr. Shallenberger: That's right.

Mr. Roethke: Deviation is the disturbance from the ship, such as the presence of steel that affects a true reading of the compass. Variation is because of the area in which you may be navigating.

The Witness: Yes, that's right. [355]

The Court: Can we have him draw a line on this chart as to the course he was taking?

Mr. Shallenberger: I don't see why not.

Mr. Callaway: That's all right.

The Court: First, before you start the line, as you went between the light and the breakwater, do you know where you went through? About the middle?

The Witness: About here.

Mr. Roethke: Why don't you give the track of your vessel from Fish Harbor right through the breakwater, and so forth?

The Witness: That's right.

Mr. Shallenberger: You don't need to do it with the ruler, just free-hand.

Mr. Roethke: That's right, do it the way it will be best for you.

The Witness: This is it. From here, we went

(Testimony of Jack Borcich.)

southeast, because we was going southeast, half east, and then we get to the breakwater.

The Court: In other words, the line you have drawn, from the time you left the entrance to Fish Harbor, was a straight line?

The Witness: Straight line.

The Court: Through the opening, and then continuing straight on? [356]

The Witness: No. Then we change southeast, to southeast.

The Court: You changed. Would you say you swung to the left or to the right as you went through the opening?

The Witness: As we went through the opening, we went left, a little bit to the right.

The Court: Can we draw a southeast magnetic on here?

The Witness: It is pretty hard.

Mr. Roethke: Here is 140. You would have to step it up.

The Witness: No. You have to take deviation on there.

Mr. Roethke: That is a true 140-degree course.

The Witness: That is deviation in there.

Mr. Roethke: When you are correcting for the easterly variation, do you add or subtract from the magnetic?

The Witness: Subtract.

Mr. Roethke: Then what course would you steer to make good a course of 140 true?

(Testimony of Jack Borcich.)

Mr. Callaway: May we have one counsel at a time cross-examining?

The Witness: Wait a minute. If I was going on my compass 140, get me right, I was going on my compass 140. I took the deviation already out.

The Court: You have drawn a line through the compass. Now, mark this as "A," just one "A."

(Witness complying.) [357]

The Court: That is 140 true?

The Witness: That is right.

The Court: Without correction from the deviation.

The Witness: That is right.

The Court: Now draw another line and mark it "B" on here, showing the course for the deviation.

(Witness complying.)

The Court: Now, wait. He has drawn 140 true to start with, by the "A." What he ought to do is to take—get the 140 magnetic first and then work back to true. Can you work out there what your compass reading of 140 is?

The Witness: What 140 is? That would be 155, and then I took off 15, and that would be 140.

The Court: But that would mean your compass was reading 155?

The Witness: No, but I was going 140.

The Court: Magnetic.

The Witness: That's right.

The Court: If you are going 140 magnetic, then the true course is something else.

(Testimony of Jack Borcich.)

The Witness: That's right.

The Court: If your course was 140 magnetic, what would the true course be?

The Witness: The true course would be 155.

The Court: Then draw a line here for 155, and show the [358] 155 on here.

(Witness complying.)

The Court: Mark that "B."

(Witness complying.)

The Court: Now, line "B," so I understand it, is 155.

The Witness: True

The Court: True.

The Witness: And 140 is magnetic.

The Court: And 140 is magnetic, that would be the magnetic reading. So line "A" is the course you were actually following?

The Witness: That's right.

The Court: All right.

Mr. Roethke: If he is steering 140 magnetic, he is not following line "A."

Mr. Callaway: He is following line "B."

The Court: He said "B" was 155 true.

Mr. Callaway: But 140 magnetic. So, in other words, if you notice, this line "B" is actually parallel with the course he has indicated.

The Witness: That is the one I indicated.

Mr. Roethke: But that is not in accordance with his testimony.

The Court: I will study this later. The line "B," then, is 155? [359]

(Testimony of Jack Borcich.)

The Witness: That's right.

The Court: Write "155" there after that.

(Witness complying.)

The Court: And line "A" is 140?

The Witness: 140.

The Court: That is our true, as far as this chart is concerned?

The Witness: That is right. Inside are true, and these outside are not true.

The Court: The inside circle?

The Witness: This inside circle, if I want to go——

The Court: The inside circle you are talking about is this circle here?

The Witness: Yes.

The Court: Mark that "C," just put a "C" there.

(Witness complying.)

The Court: That is, you say, true?

The Witness: That is true compass, and the other one——

The Court: And the outside is the corrected?

The Witness: It would have to be corrected.

The Court: It is not corrected on here?

The Witness: No. This one is true and this one you have to take deviation on it.

Mr. Roethke: Isn't it just the opposite, Mr. Borcich, actually? [360]

The Witness: What do you mean?

(Testimony of Jack Borcich.)

Mr. Roethke: Isn't the outer circle of the compass the true heading?

The Witness: So is this one.

Mr. Roethke: That is the magnetic north heading. You have an easterly variation there of 15 degrees.

The Witness: Easterly variation, all right. Look right here. If I want to take the course east, I take it just like this. There is east, and I don't take no variation whatsoever. If I want to take—if I have to take this one on the outside, I have to vary it this way, but not this one on the inside. If I take a course on this one—if I take a north on this one, this is my course, this is it. Say I am coming from here. I am coming from here and I am steering north. This is my course right here.

Mr. Roethke: That is a magnetic course, then.

The Witness: That's right.

Mr. Roethke: That is not true north.

The Court: I think I can read that now. On your compass, you were steering 140, as you read on your compass?

The Witness: Something around there, because I always try to keep the boat southeast. You can't just keep looking at the compass all the time. You can't look at the compass all the time while you are navigating.

The Court: Do you know when you finally cleared the [361] light, the breakwater?

The Witness: Yes.

(Testimony of Jack Borcich.)

The Court: Did you continue on in the same course you had been following, or did you change to the right or the left?

The Witness: When I got out of the breakwater, I changed just a little, few degrees to the right.

The Court: To the right?

The Witness: To the right. When I got on the——

The Court: I had understood you to say you changed a few degrees to the left.

The Witness: No.

The Court: To the right?

The Witness: Yes, because I was going south-east, one-quarter east from the breakwater.

Mr. Callaway: Your Honor, I think you will find that as far as this diagram, that is not a compass correction, all that is is a correct north, a magnetic north. In other words, that is not a compass correction. A compass correction is governed by conditions of air and a number of other things I don't even know.

Mr. Shallenberger: You are laying out the course on the chart here.

Mr. Callaway: This is the man who was navigating the boat. [362]

Mr. Shallenberger: He can testify when he gets up there. I want to know what this man knows.

Mr. Callaway: Go ahead.

The Court: Go ahead.

Q. (By Mr. Shallenberger): Now, then, Mr. Borcich, what decided you to steer a compass course of 140 degrees?

(Testimony of Jack Borcich.)

A. Because when we got out of the breakwater, we have to go to the first—I always do that, to go east, so we can change the course of the boat towards the fishing grounds.

Q. Did you decide to steer 140 degrees or did someone tell you?

A. Nobody told me to steer 140. I was steering the boat.

Q. It was your decision? A. That's right.

The Court: We were talking about a chart here a few minutes ago. We didn't refer to it by exhibit number. It is Exhibit J, on which the lines and figures were drawn.

Q. (By Mr. Shallenberger): Now, Mr. Borcich, isn't it true that just prior to this collision you had had some engine trouble?

A. To this collision?

Q. Yes. A. No.

Q. Isn't it true that on this day you had trouble with [363] your reverse? A. No.

Q. You had no trouble with your reverse?

A. No.

Q. Before this collision occurred, when was the last time you used your reverse?

A. When I left the cannery.

Q. And you didn't use it again until the time of the collision? A. I did not use it at all.

Q. You didn't use it at the time of the collision? You didn't use it after the collision?

A. After the collision, I did use it.

Q. When?

(Testimony of Jack Borcich.)

A. When we landed the boat on Van Camp dock.

Q. What did you use the reverse for then?

A. To stop it.

Q. Did you have any trouble with it?

A. No.

Q. At that time, did the Bear also use its reverse?

A. Not when we came on the Van Camp.

Q. Did it at any time prior to that use its reverse, that you know of?

A. You mean after that?

Q. No, before that. [364]

A. You mean the Bear?

Q. Yes.

A. He did. He backed up when I told him to come alongside of us.

Q. What kind of a fog whistle do you have on the Marsha Ann?

A. Air whistle.

Q. How big a whistle is it?

A. It is a four-inch whistle.

Q. By "four-inch" you mean the diameter across the bell of the whistle?

A. The diameter where the disk is.

Q. Where the disk is?

A. Yes.

Q. That is the vibration disk you are talking about?

A. That's right.

Q. Do you know what the diameter of it is across the bell or the mouth?

A. I really don't know. I think it is around six inches, something like that. I really don't know.

Q. How do you run that whistle?

(Testimony of Jack Borcich.)

A. By air.

Q. How many pounds air do you use?

A. Well, we have electric—how many pounds?

Q. Yes. [365]

A. I really don't know how many pounds it takes to run one of them.

Q. You don't know how many pounds of pressure you use when you blow that whistle?

A. Not very much.

Q. Well, would you say 10 pounds or 100 pounds?

A. Well, I don't know how many pounds exactly it takes.

Q. Well, that to a certain extent determines the amount of noise the whistle makes, doesn't it?

A. Oh, yes, it does make plenty of noise.

Q. But doesn't your air pressure determine how much noise it is going to make?

A. That is right.

Q. And your whistle makes a lot of noise, is that right?

A. That's right.

Q. Did you observe the whistle on the Bear?

A. I observed the whistle on the Bear, but very faintly.

Q. Did you observe the whistle on the Bear?

A. Did I see it?

Q. Yes. A. You mean on his mast?

Q. Yes. A. Yes, I did. [366]

Q. It is the same type whistle you had, isn't it?

A. No.

Q. What was the difference?

A. It was different than mine altogether.

(Testimony of Jack Borcich.)

Q. It was an air whistle, wasn't it?

A. Yes. They have all kinds of air whistles.

Q. Beg pardon?

A. They have all kinds of air whistles.

Q. Did you notice what size whistle it was?

A. It wasn't very big. The stem was long, but it was awful narrow.

Q. Now, then, if I understand your testimony correctly, Mr. Borcich, on this particular day you were at the wheel?

A. That's right.

Q. And you were operating the wheel, the engine room control, and blowing the whistle when necessary, is that right?

A. Well, I tell you——

Q. Well, is that right or isn't it, Mr. Borcich? All you have to do is tell me yes or no.

A. When I was controlling the—I was controlling the wheel, whistle, and just the controls that pull the speed, that's all.

Q. Those are all the controls that there are up there, aren't they? [367]

A. No.

Q. What other controls are there?

A. The other controls are to start the engine and to kick it ahead, to start and stop it.

Q. And you weren't operating those?

A. No, I was not operating that.

Q. Who was? A. Martin Miskulian.

Q. He was operating that? A. Yes.

Q. And Mr. Zankich was operating the radar?

A. That's right.

(Testimony of Jack Borcich.)

Q. Mr. Borcich, what time did you serve lunch aboard your ship that day?

A. I really can't remember that. I am not sure if—I think we serve when we brought the Bear in by the cannery. I am pretty sure that we did.

Q. Isn't it a fact, Mr. Borcich, that you served lunch right after you finished unloading the fish at French Sardine?

A. No.

Q. You didn't?

A. No.

Q. When did you have breakfast that morning?

A. When I got up. [368]

Q. Well, when was that?

A. When we came on the breakwater.

Q. What time was that?

A. Oh, I would imagine about 6:30.

Q. Did the rest of the crew have breakfast at that time, too?

A. No.

Q. When did they have breakfast?

A. I don't know.

Q. Do you know whether they had breakfast or not?

A. Well, to tell the truth, no, because some guys eat breakfast and some guys don't.

Q. Mr. Borcich, how long was it from the time you stopped until you saw the Bear with your eyes?

A. Oh, I would say from five to six minutes, maybe more. I really can't—

Q. Maybe more, maybe less?

(Testimony of Jack Borcich.)

A. No, not less than the—I don't think we was less than five or six minutes there.

Q. How do you arrive at that five or six minutes, Mr. Borcich?

A. I have a clock right there and—well, the length of time, we was just—because I remember giving two whistles. Twice I give whistles, and I figure that is about five or six minutes in [369] between.

Q. Twice you gave whistles, and you figure that is five or six minutes, and that is the way you arrive at the five or six minutes, is that right?

A. Yes.

Mr. Shallenberger: That's all.

Mr. Callaway: That's all.

The Court: I would like to ask a question or two, and counsel may object to any of these questions, if you want to.

Mr. Callaway: If I think they are not proper, I will.

The Court: This particular morning, you had come back from Oceanside?

The Witness: That's right.

The Court: And you loaded your boat with fish down around Oceanside?

The Witness: That is about 150 miles.

The Court: You had come in early?

The Witness: Well, your Honor, the boat we have, if we caught fish an hour after the other boats, we would beat them in anyway, you see, because we have got lots of speed, and they have—

(Testimony of Jack Borcich.)

The Court: Was there any fishing going on out in the channel between Catalina and San Pedro that morning?

The Witness: There might have been. There was. You see some boats work outside between Catalina and San Pedro, off any port, off Point Vicente, and all over. [370]

The Court: But fishermen generally go to the place where the most fish are being caught?

The Witness: That's right.

The Court: And most of the fish were being caught down around Oceanside?

The Witness: That's right.

The Court: After you clear the light, between the light and the breakwater, is there any reason that you can't immediately take a course of about 90 or 100 or 110 degrees and start right back down to Oceanside?

The Witness: Yes, your Honor, you can, but——

The Court: What I am getting at is, why did you turn right after you got out of the harbor, rather than turning left?

The Witness: I turned right, because when we are going to Oceanside, I got out a little bit on account of Dana Point, I like to be outside there three or four miles when we are going down there, if it is possible.

The Court: When you go down to Oceanside and come out of the light and the breakwater, do you always take a turn right instead of left as you get out of the breakwater?

(Testimony of Jack Borcich.)

The Witness: Well, when it is clear you don't have to, because this other breakwater over here, the pleasure boats usually fish on the bank there, and we don't like to go into the bunch of little boats in the fog. [371]

The Court: They generally fish where?

The Witness: Right off the breakwater, a new breakwater, the breakwater that is east is the new breakwater.

The Court: East of the light?

The Witness: That is right.

The Court: Most of these boats you saw in the radar were coming in toward the harbor?

The Witness: That's right.

The Court: At about, oh, somewhere between, say, true north 270 and 300, weren't they?

The Witness: That's right.

The Court: Heading for the breakwater?

The Witness: That's right.

The Court: Isn't there less hazard in approaching another boat if you approach the boat when you are going about the same course, meeting head on, rather than meeting crossways?

The Witness: Well, to tell the truth, when it is really foggy, you can sometimes come alongside and you don't see each other.

The Court: All right. But in heavy fog, wouldn't there be less hazard if there is a bunch of boats coming toward you in heavy fog, wouldn't there be less hazard if you headed into the boats along the same

(Testimony of Jack Borcich.)

line they were following, rather than cut across the boats? [372]

The Witness: In that matter, it might be, but——

The Court: I don't know. I am just asking you. You tell me what you think.

The Witness: It might be, but I figure the boats was to the left of us, so we generally keep going a little southeast and then turn down.

The Court: But your radar showed boats off of your port and off of your starboard, both.

The Witness: That's right, but there was only one on the starboard and he was—he looked like he was going—like the chief tell me, he says, "Well, there is one on the starboard going to pass us there right away," because he was coming from a west direction, he was coming from a point——

The Court: The boat that finally hit you came from the port side?

The Witness: Port side.

The Court: Now, I have another question. You say you stopped the boat about ten times?

The Witness: That's right, inside the break-water.

The Court: You mean that you stopped the engine?

The Witness: That's right.

The Court: You never did put your engine in reverse and bring your boat to a stop?

The Witness: No.

(Testimony of Jack Borcich.)

The Court: How big are the windows of your pilot house? [373]

The Witness: Oh, I would say one and a half by two.

The Court: Is there some space covered up by wood and frame in between the windows, as in this model?

The Witness: Just a little ways.

The Court: Just as there is in the middle here?

The Witness: That's right.

The Court: In other words, there is almost as much space between the windows as there is windows.

The Witness: Oh, no, no. The space between the windows is from four to six inches, and the window is about a foot and a half wide and two feet high.

The Court: Was there a lot of fog on your windows that morning, of the pilot house?

The Witness: Yes, but that was escaping from inside.

The Court: You were inside?

The Witness: I was right there.

The Court: Out of the pilot house?

The Witness: That's right.

The Court: Where was the engineer? Inside?

The Witness: He was inside, and this window is open here and we could hear him.

The Court: He was talking to you from the inside?

The Witness: That's right.

(Testimony of Jack Borcich.)

The Court: And you were on the outside?

The Witness: Yes. [374]

The Court: All right. That clears that up.
Thank you very much.

Mr. Callaway: Do you have any more?

The Court: No.

Mr. Shallenberger: There is one more question I have.

Q. (By Mr. Shallenberger): How much fish did you bring in on that load to French Sardine?

A. I think we brought the limit, and I can't remember what the limit was that day. I am pretty sure we brought the limit that day. I don't know what the limit was, but I think we brought the limit, some place around there. I do remember that.

Q. In other words, French Sardine had their boats on limits? A. That's right.

Q. And you think you brought the limit?

A. That's right. Everybody did.

Mr. Shallenberger: I have no further questions.

The Court: You may step down.

(Witness excused.)

The Court: We will take a short recess.

(Short recess.)

The Court: You may proceed.

Mr. Callaway: Mr. Zankich. [375]

BORTUL ZANKICH

called as a witness by and on behalf of the respondents, being first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Bortul Zankich.

Direct Examination

By Mr. Callaway:

Q. Mr. Zankich, are you one of the owners of the Marsha Ann? A. I am.

Q. How long have you been one of the owners?

A. Three years.

Q. What position do you occupy among the crew, or did you occupy on November 30, 1948?

A. Engineer, navigator, and radar operator.

Q. What kind of radar set did you have?

A. A Rayathon, SO-1.

Q. Did you have that in operation before your collision with the Bear on that day? A. Yes.

Q. About what time did the collision happen?

A. 11:00 o'clock by our clock.

Q. Where were you when you first started using the radar?

A. Right after we left the harbor, we saw a fog ahead. [376] I didn't see the fog, but Jack called me up to get the set going.

Q. Did you know how the set operated?

(Testimony of Bortul Zankich.)

A. Well, it is similar to a television and it has a sweeping arm from the center. There is a beam of light. It just sweeps around like the dial of a clock.

Q. Like a lighthouse light?

A. Well, it is just like a line, a line of light sweeping around from the center to the outside of a circle. It continually sweeps around a circle, and, well, if an object is directly ahead, as this light sweeps across that circle, it leaves a mark on the screen.

Q. How far away from you will it pick up such an object? A. 200 yards.

Q. Anything that gets any closer than that to you, you cannot see on the radar, is that right?

A. That's right.

Q. When did you first put this radar set in operation? You say you were about half way from Fish Harbor to the breakwater? A. Almost.

Q. Did you see any boats?

A. Yes, there was boats going in and out. I could see the boats coming out of the fog and other boats going into [377] the fog, going out.

Q. When did you first pick up, where was your boat when you first picked up the boat that eventually turned out to be the Bear?

A. Well, probably I had him on the screen right away, but he wasn't in the area where we would start worrying about him until we got to the breakwater.

Q. How far away will the radar show objects?

(Testimony of Bortul Zankich.)

A. Well, we have four ranges, four-mile range, 20-mile range, and 80-mile range.

The Court: Can you tell the course or direction of a boat by the radar?

The Witness: Yes, you can tell the course and direction and its speed, if you have enough time to figure it out.

The Court: How can you tell the course and direction, by a series of dots?

The Witness: It keeps changing location.

The Court: A dot appears on the screen, and as the light sweeps around the second time, does another dot appear?

The Witness: Yes.

The Court: Is the first dot still there?

The Witness: Yes.

The Court: On the third sweep, does a third dot appear?

The Witness: That's right.

The Court: Are the first two dots still [378] there?

The Witness: They are fading out.

The Court: About how many dots are visible at one time in the case of a moving object?

The Witness: Well, you wouldn't call it exactly a dot. It is—well, the boat may have a picture like a grain of rice on the screen, and if the boat is moving ahead, that grain of rice will be brighter in the direction the ship is moving. The head will be brighter, while the back end is fading out.

The Court: It leaves a kind of streak made up of a series?

The Witness: Yes.

(Testimony of Bortul Zankich.)

The Court: The brighter end indicating the direction of movement?

The Witness: Yes.

The Court: Can you tell the size of the object by the size of the dot?

The Witness: Yes, I can tell. It takes experience to do that from the different sizes of boats, but you can tell what they are, like fishing boats all have the same characteristics as to the markings.

The Court: So you can practically chart the course of an object that is in front of you.

The Witness: Yes.

The Court: All right. Go ahead. [379]

Q. (By Mr. Callaway): Where were you seated in the operation of this radar?

A. In the wheelhouse, looking at the screen, radar screen.

Q. Where was Borcich? A. At the wheel.

Q. Was that on the outside?

A. That is on the outside of the house.

Q. Did you notice anything unusual on the radar in connection with this boat that eventually, you say, you knew to be the Bear?

A. Yes. He was changing course.

Q. By that, what do you mean?

A. Well, he didn't have a constant direction. He was going one direction for a while, and then he would swing and change. I think he was looking for the light. He knowed where the light was, but he probably couldn't get its true direction in the heavy fog.

(Testimony of Bortul Zankich.)

Q. Well, tell us what happened in that connection, in connection with those observations. Did you report them to the skipper? A. Yes.

Q. Well, did the Bear eventually pass out of the observation you could make of it on the screen?

A. Yes, it did. [380]

Q. Tell us where your boat was at that time.

A. Well, we were abeam of the breakwater when I told Jack that there was one boat off, between one and two points off the starboard bow, and two boats 45 degrees to port. He stopped then, because I also notified him one of the boats to port was erratic in its direction.

Q. Did you continue to observe the boat?

A. Yes, I did. I was observing all three boats, because they were getting pretty close.

Q. Did you proceed on out from the breakwater?

A. He stopped the engine, just about, well, I would say we just passed it.

Q. Where were you when the collision happened?

A. At the radar.

Q. What? A. At the radar screen.

Q. Where was the boat?

A. Oh, pardon me. Well, I would say we were maybe a quarter of a mile from the light. I could see the lighthouse on the screen. It was in the visible area.

Q. In what direction were you headed?

A. Southeast.

Q. Let me ask you this. Did you start the engine up again at the breakwater and move on out

(Testimony of Bortul Zankich.)

to where you were, you say, a quarter of a mile away? [381] A. I didn't start the engine.

Q. I don't mean you, but did whoever was operating the boat?

A. No, I didn't hear the engine start any more after we passed the breakwater, when it stopped after we passed the breakwater.

Q. Did you tell the captain to stop?

A. I told him it would be safe to stop because of the indefinite course of the boat on the port.

Q. What I am getting at is, how did your boat get from the breakwater out a quarter of a mile?

A. The boat has way on it.

Q. When did you first see the Bear with your eye? A. After the collision.

Q. How long would you say it was after the motor of the boat was stopped before the collision?

A. Well, I have no way of judging that, only by guess.

A. Well, just approximate it, if you can.

A. Well, it may have been five minutes, more or less.

Q. Before the collision, did you hear any whistle signals being given by your boat? A. Yes.

Q. What did you hear?

A. I heard the—after we come out of the light or before? [382]

Q. After you came through the breakwater?

A. Well, we had stopped the engines after we passed the breakwater, and was giving two blasts.

(Testimony of Bortul Zankich.)

Q. What kind of blasts, prolonged or short blasts?

A. Maybe four or five seconds to a blast.

Q. How far apart?

A. Maybe a minute and a half, two minutes at the most, not more than two minutes.

Q. Did you hear any signals from other boats around?

A. Yes, I could hear the whistles from other boats, inside where I was, yes.

Q. I beg your pardon?

A. I could hear the whistles from other boats, inside where I was.

Q. Did you hear any signal, or whistle signal, in the direction of the Bear, immediately before the collision?

A. I don't know the directions. I mean I can't tell the direction it was coming from.

Q. Let me ask you this. What was the first thing of an unusual nature that attracted your attention just before the collision?

A. Well, it was yelling.

Q. It was yelling?

A. I don't know. It sounded like everyone was yelling.

Q. Did you come out of the pilot house immediately [383] after the collision happened?

A. Yes.

Q. Where was the Bear then?

A. It was at our bow.

(Testimony of Bortul Zankich.)

Q. Was there any forward movement of your boat at the time of the collision?

A. I couldn't see any.

Q. What?

A. I couldn't see any forward movement.

Q. Did the Marsha Ann propel the Bear through the water broadside? A. I doubt it.

Q. She was not broadside when you saw her?

A. No.

Q. What position was she in?

A. Well, she was still swinging, the boat was still swinging, his stern was coming towards our port side.

Q. Do you know whether or not, Mr. Zankich, there was anybody stationed at the bow of the boat just before the collision?

A. Yes, Steve Kujlis was at the bow.

Q. Can you, Mr. Zankich, tell us why it is safer to stop under conditions such as you have described than it is to proceed in the direction of an oncoming boat?

Mr. Shallenberger: I object to that, Your Honor, as [384] calling for a conclusion.

The Court: Overruled. He is experienced.

The Witness: Well, you can stop your engine and still maintain what is called boat under way. Engines can be stopped and the rules of the road say you are still under way as long as you hold your course. So that is why it is safe to do so.

Q. (By Mr. Callaway): How many times, if you remember, did you give the skipper a report on

(Testimony of Bortul Zankich.)

these two vessels that were approaching on your port?

A. I think I was practically talking continuously.

Q. Did you give him the range of the boats?

A. Yes.

Q. Did you give him the position?

A. Position and range, yes.

Q. Was that done up until the time that the Bear passed off your screen and within the 200 yards?

A. It was done even after that. It was done on the other boats.

Q. In other words, you continued to give him——

A. Yes, I told him that the Bear—I didn't know it was the Bear at the time, but I told him one of the boats on the port was out of sight, in a blind spot, and to watch for him, and that the others were still O.K., they were traveling in. [385]

Q. Was the Bear the boat that was not holding its course, that you saw on the screen?

A. Yes. That is what I concluded towards the end, because the other boat I continued to see until he disappeared inside the breakwater.

Q. How long have you been connected with commercial fishing boats in navigation?

A. Well, I started in 1933. I was out during the war for six years.

Q. By the way, after you had towed the Bear in, and so on, did you go on out fishing?

(Testimony of Bortul Zankich.)

A. After we left it at the shipyard, we proceeded to the fishing grounds, yes.

Q. In other words, there was nothing about your boat that prevented its operation?

A. No, sir.

Q. Was the damage confined to the stem being bent, as is shown on these photographs? You have already seen them.

A. Yes, I have seen them. That was it.

Q. Is that right? A. Yes, sir.

Q. Just before the collision happened, did you hear any unusual whistle signals from your boat?

A. Yes. I heard the danger signal.

Q. What is that? [386] A. Four blasts.

Q. Short or long?

A. They are not long. The danger signal is pretty quick.

Mr. Callaway: You may cross-examine.

Cross-Examination

By Mr. Shallenberger:

Q. Mr. Zankich, how did you arrive at the decision that four blasts of the whistle is a danger signal? A. I read it in the rules.

Q. Is that one of the rules?

A. I couldn't state positively, no.

Q. By "the rules," are you referring to the international rules of the road? A. Yes.

Q. Is there any other reason for believing four whistles or four blasts is a danger signal?

A. No.

(Testimony of Bortul Zankich.)

Q. Keep your voice up a little bit. I can't hear you.

Now, then, Mr. Zankich, showing you this model vessel, would you tell me where the radar screen is located? A. Inside of this wheel house.

Q. Inside of this top wheel house?

A. That's right.

Q. Where inside of the wheel house? [387]

A. Well, just, you go through the chart room, there is a chart room on that side, and the skipper's room is on this side. It is in the skipper's room.

Q. In other words, there is a room on the port side of the wheel house? A. Yes.

Q. And there is a room on the starboard side of the wheel house? A. Yes.

Q. And it is in the room on the starboard side of the wheel house?

A. Yes, and midships, that is, practically midships.

Q. In other words, the wheel house is divided into three compartments, is that right?

A. That's right.

Q. Now, then, where in the skipper's room on the starboard side of the wheel house is the radar screen located?

A. In the center. It is in the—well, the partition between the chart room and the skipper's room.

Q. It is on the longitudinal partition between the two rooms? A. Alongside of it.

Q. Alongside of it?

(Testimony of Bortul Zankich.)

A. Yes. Some of the equipment is hanging on that partition. [388]

Q. Well, are there other parts of the radar equipment at other places in the room?

A. Yes. Parts of it are all over the boat.

Q. Well, I mean in that particular room.

A. Well, some hangs from the ceiling, some is hanging from the partition.

Q. Well, is the screen on the partition?

A. The screen hangs from the ceiling.

Q. Alongside the partition? A. Yes.

Q. Then, in order to observe the screen and what goes on on the screen, you would have to face the partition, is that correct?

A. No, I face the screen.

Q. But isn't the screen in the same relative position as the partition?

A. No. The screen—my back is towards the bow of the boat when I face the screen.

Q. Your back is toward the bow of the boat when you face the screen?

A. I am sitting at the door.

Q. You are sitting at the door?

A. Yes, sir.

The Court: The door into the skipper's compartment?

The Witness: The door into the skipper's compartment. [389]

Q. (By Mr. Shallenberger): With your back to the bow of the boat?

A. Back to the bow of the boat.

(Testimony of Bortul Zankich.)

Q. Now, can you do everything that is necessary to operate the radar from that position?

A. I can.

Q. How big is the screen, Mr. Zankich?

A. I believe the tube is eight inches. I have never measured it.

Q. Is that eight inches in diameter?

A. In diameter, yes.

Q. Is that a circular tube?

A. Circular, yes.

Q. And these points of light on the tube that you mentioned, how large are they?

A. Well, the fishing boat makes about—well, about the size of a grain of rice.

Q. I beg your pardon?

A. About the size of a grain of rice for a fishing boat, purse seiner.

Q. And for a battleship?

A. Well, a battleship will—it depends on the size of the ship. A large ship will make a large mark.

Q. Make relatively larger marks?

A. I have seen battleships make, well, almost a mark [390] as large as a jelly bean.

Q. Now, then, you started operating the radar screen, as I understand it, about half way between Fish Harbor and the breakwater; is that right?

A. Yes. Not quite half way.

Q. A little before half way?

A. Before half way.

Q. And you immediately started seeing vessels on the screen, did you not?

A. That's right.

(Testimony of Bortul Zankich.)

Q. How many did you see?

A. I didn't count them.

Q. Did you see one vessel or ten vessels?

A. Well, maybe twenty, maybe more. I didn't count them.

Q. But you saw numerous vessels?

A. I did.

Q. In other words, there could be ten or twenty or thirty? A. That's right.

Q. As you proceeded toward the breakwater, did you continue to see numerous vessels?

A. Yes.

Q. In other words, the screen was practically dotted with vessels, isn't that correct?

A. Yes, to port, starboard, behind us. [391]

Q. Behind you, ahead of you, port and starboard? A. That's right.

Q. Now, that condition continued after you got out of the breakwater, too, did it not?

A. Behind us, yes. There were numerous boats behind us then. Just three ahead.

Q. There were only three vessels that you could see ahead when you got to the breakwater, is that right? A. On the four-mile range.

Q. On the four-mile range?

A. That's right.

Q. Did any other vessels come on the screen in addition to those three, between the time you reached the breakwater and the time of the collision? A. No.

Q. No other vessels but those three?

A. No.

(Testimony of Bortul Zankich.)

Q. Any vessels behind you, on the screen at that time? A. There were boats coming out.

Q. Could you see those boats?

A. Yes, but they are behind us. You are not worrying about them.

Q. No, but they were on the screen, weren't they, Mr. Zankich?

A. Yes, they were on the screen. [392]

Q. Now, Mr. Zankich, coming out of the harbor that morning, after you got into the fog—Strike that question.

When you first got into the fog, which was in the harbor, did you hear the whistles of any other vessels? A. Yes.

Q. How many vessels would you say you heard the whistles of?

A. I don't know. Numerous.

Q. But there were numbers of them, you would say, from the sound, would you not? A. Yes.

Q. And as you proceeded on to sea, you continued to hear numerous whistles, did you not?

A. Until we got to the breakwater. Then there weren't so many after the breakwater.

Q. But when you left the breakwater, you did continue to hear whistles, did you not?

A. Yes.

Q. Did you determine how many whistles you heard after you got to the breakwater?

A. No.

Q. You couldn't tell whether it was from one boat or a dozen boats, could you?

(Testimony of Bortul Zankich.)

A. No. I wasn't paying any attention to it.

Q. In other words, had you been paying attention to the [393] whistles, could you have told how many boats they were coming from?

A. If I had been outside and concentrating on it, I believe I could.

Q. Now, then, from the time that you started the radar in operation, did you remain in the radar room from that time until the time of the collision?

A. I did.

Q. Was anyone else in the radar room with you?

A. No.

Q. Was anyone in the wheel house, to your knowledge? A. Inside the wheel house?

Q. Yes. A. No.

Q. Was anyone in the skipper's room?

A. I was in the skipper's room.

Q. Well, the other room that is next to it.

A. The chart room?

Q. The chart room. A. No.

Q. Was anyone in the chart room? A. No.

Q. Now, then, Mr. Zankich, I wonder if you would be kind enough to make a little diagram, sort of a floor plan of the wheel house, showing where the things are that you [394] have been describing.

A. (Witness complying): This is the chart room, and the skipper's bed is here.

The Court: What is this here?

The Witness: This is the radio, the transmitter,

(Testimony of Bortul Zankich.)

receiver, facing over here. The controls are in the wheel house.

Q. (By Mr. Shallenberger): Now, this opening here into the chart room is a door? A. Yes.

Q. And the opening shown in the forward part of the chart room is a door?

A. That is a door, yes.

Q. And I assume that the curved line indicates the direction of the bow of the vessel.

A. That is the bow, and the wheel is here.

Q. Where was the radar screen?

A. This is the radar screen.

Q. This is the radar screen?

A. It is almost flush with the door. I stand here.

Q. Will you write up here "Forward part of flying bridge"? A. (Witness complying.)

Q. Will you draw a line from this out here and put "Radar," just write "Radar."

A. (Witness complying.) [395]

Q. And then will you draw a line from this "X" and put "Zankich"?

A. (Witness complying.)

Q. Will you draw a line from here out here and put "wheel"? A. (Witness complying.)

Mr. Shallenberger: I would like to offer this in evidence, your Honor.

The Court: It will be admitted in evidence as libelant's exhibit next in order. That will be 13 in evidence.

(The document referred to was marked Libelants' Exhibit No. 13 and received in evidence.)

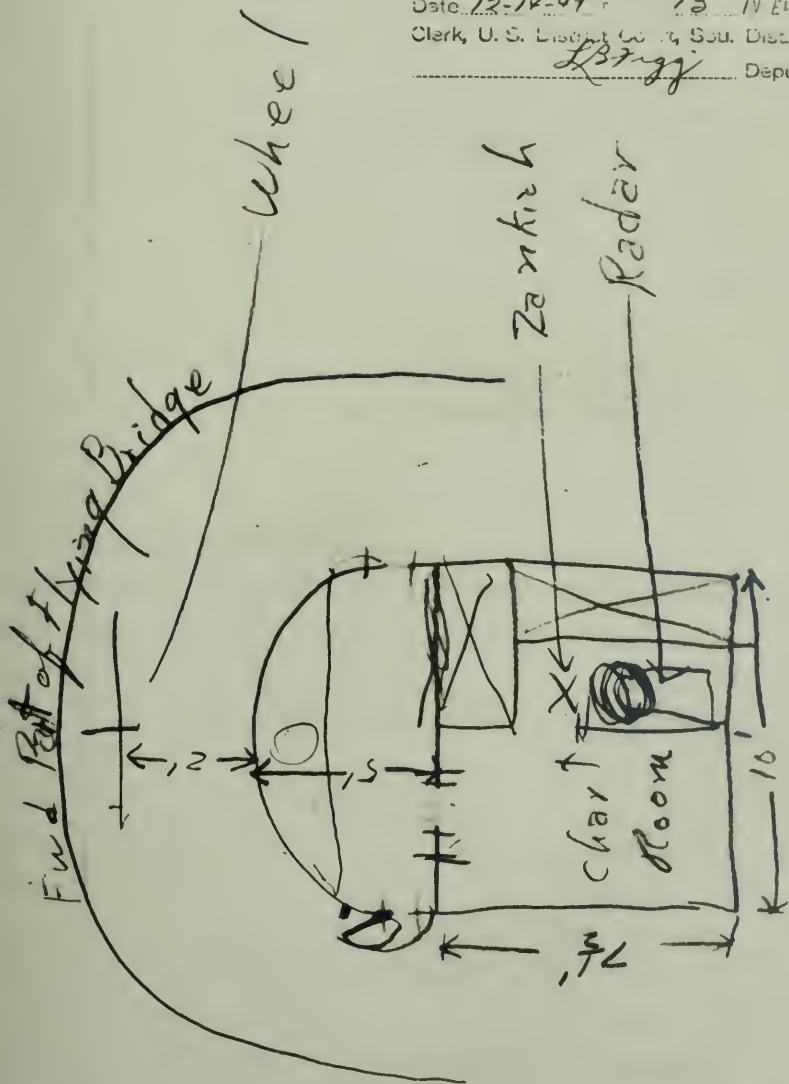
438

Case No. 8960-Cadm.Ancich vs. "Martha AnnLeblanc EXHIBIT 13Date 12-14-49 No. 13 IDENTIFICATIONDate 12-14-49 No. 13 IN EVIDENCE

Clerk, U. S. District Court, S. D. Cal.

LB Briggs

Deputy Clerk



The Court: I would like to find some dimensions. How deep is the chart room from the doorway to the back in feet?

The Witness: Maybe seven and a half feet.

The Court: Will you put that there.

(Witness complying.)

The Court: And how wide is the entire cabin?

The Witness: I would say ten feet.

The Court: How far is the wheel forward of the front, curved portion of the cabin?

The Witness: There is room for a man to stand there.

The Court: Just room for a man to stand?

The Witness: Yes. I would say two feet. Shall I put that in there? [396]

The Court: You can put that in there.

(Witness complying.)

The Court: What is the distance between the inside of the curved portion of the pilot house back to the partition?

The Witness: Oh, let's see. There is a shelf, maybe five feet.

The Court: And the compass?

The Witness: Yes. The compass is, say, five feet.

The Court: How many windows are in this curved portion, all the way around?

The Witness: All the way around? The door opens in this direction, and from almost where the door would hit, it is continuous all the way around to where this door comes.

The Court: All right.

(Testimony of Bortul Zankich.)

Q. (By Mr. Shallenberger): Now, then, Mr. Zankich, you have testified that you kept up a continuous conversation with the skipper from the time that your radar went into operation until the time of the collision?

A. Yes. I continuously observed and talked about what I observed.

Q. What did you tell the skipper?

A. I reported positions and ranges and directions of other boats.

Q. And did the skipper converse with you?

A. Well, he would ask questions. [397]

Q. What would he ask you?

A. Well, if we were in the clear, if there was anybody approaching us too fast, or anything like that.

Q. Now, then, from the time that you stopped the engine, or that the engine was stopped, from that time on to the time of the collision, what conversation did you have with the skipper?

A. I continued to give positions of boats.

Q. What boats did you give him the position of?

A. Well, there was a lot of boats. We stopped many times before we got to the breakwater.

Q. I mean from the time that you stopped your engine outside of the breakwater?

A. Well, the boat that turned out to be the Bear seemed to be one of the most concern.

Q. All right. What conversation did you have with the skipper?

A. I told him to look out for one of the boats

(Testimony of Bortul Zankich.)

that was on the port bow, one of them was coming into the circle and getting too close.

Q. Mr. Zankich, showing you Respondent's Exhibit J, will you indicate where with relation to the entrance to the breakwater the vessel was when the engine was stopped for the last time?

A. Well, we just came abeam and passed. [398]

Q. You just came abeam and passed the light?

A. The light, maybe we passed it a couple hundred yards.

Q. Maybe you passed it a couple hundred yards and then turned the engine off? A. Yes.

Q. Now, then, you heard Mr. Borcich testify he changed course after he got out of the breakwater. Where was the vessel when Mr. Borcich changed course? A. It was abeam of the light.

Q. In other words, when the vessel was abeam of the light is when Mr. Borcich changed course?

A. Yes, as far as I could see it then. He only changed maybe five degrees, sir.

Q. Do you know how wide the opening of the breakwater is there? A. 2,000 feet.

Q. Is there a channel going through there or is the whole 2,000 feet navigable?

A. The whole 2,000 feet is navigable except—well, you can pile up on the rocks, of course. You can't touch the breakwater.

Q. Are there any rules for which side a vessel entering that breakwater shall use?

A. Coming out, stand to the right, close to the right.

(Testimony of Bortul Zankich.)

Q. Coming out, you are supposed to stand to the right, [399] close to the light?

A. That's right.

Q. Going in? A. On the other half.

Q. You would use the other half?

A. That's right.

Q. Now, then, it is true that the limit of the radar that you had is 200 yards, as far as seeing objects that are closer than that?

A. That is the nearest on that model, yes.

Q. Are there any other limitations?

A. Distance.

Q. Are there any limitations other than distance?

A. No. I don't know what you mean?

Q. Is it possible that there is such a thing as a blind spot? A. No.

Q. In other words, within the range of distances, from 200 yards to whatever mileage you have it adjusted for, there are no blind spots?

A. That's right. Could I take that back. You could have a blind spot behind another object.

Q. In other words, two objects could be coming in the same direction, one behind the other, is that it, and you wouldn't see the second one? Is that what you mean? [400]

A. If the object is a great mass, like two boats of this type, they could be one behind the other and you would pick up both of them, but you take a battleship and you put this behind the battleship, and you won't pick up this boat, because nothing shows of it. There isn't anything you can see of it.

(Testimony of Bortul Zankich.)

The Court: The radar works on a line of sight, then?

The Witness: Yes. It is a straight——

The Court: Straight beam?

The Witness: Yes.

Q. (By Mr. Shallenberger): Now, then, where was the Marsha Ann, Mr. Zankich, with relation to the harbor and the breakwater, when you first picked up the boat that you concluded eventually was the Bear?

A. Oh, I guess he was on the screen as soon as I turned it on. Maybe not. I don't know.

Q. How did you decide that this one vessel which you noticed on the screen was the Bear?

A. After the collision.

Q. In other words, that boat went off the screen, and at the time it went off it was at a bearing which was about the bearing that the Marsha Ann and the Bear came together on, is that right?

A. Yes. There were no other boats in the blind spot but this one boat. [401]

Q. It came out of the fog and at the Marsha Ann when at about the bearing you had last seen it, is that right?

A. Yes.

Mr. Shallenberger: That's all.

Mr. Callaway: That's all.

The Court: Can I borrow the little blocks?

Mr. Callaway: Yes.

The Court: We can finish with this witness before lunch, probably.

These two blocks, the smaller one is supposed to

(Testimony of Bortul Zankich.)

represent the Bear and the other is the Marsha Ann. You felt the impact of the collision, did you?

The Witness: Yes.

The Court: Did you immediately leave your room to see what had happened, step outside?

The Witness: I ran out the port side door. I thought somebody had hit us in the side.

The Court: You were out there and you saw the boats, the Bear and the Marsha Ann, in collision, immediately after you felt the impact?

The Witness: Yes.

The Court: At that time, show me the position in which the bow of the Marsha Ann and the side of the Bear were in contact.

The Witness: Well, when I came out—— [402]

The Court: After they hit, where were they?

The Witness: After they hit, I came out on this side, the port side, and I observed the Bear swinging this way.

The Court: And the first moment you saw the Bear before the beginning of the swing, what was the position of the Bear and the Marsha Ann?

The Witness: I would say, when I saw it, it was just about like that.

The Court: The witness is indicating the bow of the Marsha Ann about midships of the Bear and with the Marsha Ann a little less than perpendicular, that is, the bow of the Marsha Ann is swung around a little closer to the bow of the Bear.

The Witness: The point of impact was aft—I

(Testimony of Bortul Zankich.)

think just a little behind amidships. It was aft of——

The Court: You got a good look at the Bear, did you?

The Witness: The stern, yes.

The Court: Was the Bear lying even in the water or was the Bear lying sideways in the water?

The Witness: It looked to me like almost on an even keel.

The Court: It was almost on an even keel?

The Witness: Yes.

The Court: I would like to ask that same question of Mr. Borcich. You saw the Bear immediately after the impact? [403]

Mr. Borcich: Yes, I did.

The Court: Was the Bear on an even keel from side to side, or was the Bear tipped over a slight bit to one side?

Mr. Borcich: It seemed to me like he was on a full even keel.

The Court: That is all the questions I have.

Mr. Shallenberger: Nothing further, your Honor.

The Court: You may step down.

(Witness excused.)

The Court: We will take our noon adjournment at this time. Before we adjourn, though, are we going to finish this today?

Mr. Callaway: I will try hard.

The Court: Off the record now.

(There was a discussion between Court and counsel off the record.)

The Court: We will take our adjournment now.

(Whereupon, a recess was taken until 2:00 o'clock p.m., of the same day.) [404]

Wednesday, December 14, 1949, 2 P.M.

Mr. Callaway: Call Mr. Williams, please.

ARTHUR WILLIAMS

called as a witness by and on behalf of the respondents, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Arthur Williams.

Direct Examination

By Mr. Callaway:

Q. What is your business or profession, Mr. Williams? A. Marine surveyor.

Q. How long have you been connected with——

Mr. Shallenberger: I will stipulate to his qualifications, Mr. Callaway.

Mr. Callaway: Thank you. I won't go into any great detail.

Q. How long have you been connected with the shipbuilding industry and construction and designing of ships?

A. Including an apprenticeship, about 35 years.

Q. And you are connected with what office?

A. Wilvers & DeFever of San Pedro.

(Testimony of Arthur Williams.)

Q. Did you have occasion at the instance of the respondents in this case to make a survey—Strike that— [405] to act as an observer during the repairs effected on the vessel Bear commencing in December, 1948, and continuing until it was completed?

A. I was called in attendance on the Bear about the middle part of December, along about the 17th or 18th.

Q. Had any work been done on it at that time?

A. Yes, there was; she was already on the ways at the Harbor Boat Works at San Pedro and side-tracked, and work was in progress of being repaired.

Q. Did you continue to attend during the repairs?

A. I was in attendance until January 11th, at which time I left for Honolulu.

Mr. Roethke: Mr. Williams, will you keep your voice up, please, toward the end of the sentence.

Q. (By Mr. Callaway): It has been testified here, Mr. Williams, that sometime after the repairs had all been effected that you agreed as to the figure of \$17,770 and some cents with Mr. Sims and Mr. Rados of the boat yard. Will you explain that, please?

A. When the vessel was finished and the repairs had been completed, I was in the office of Mr. Rados at the Harbor Boat Shop, and Mr. Sims and Mr. Al Rados were also in attendance, and they were discussing the price of repairs of the vessel Bear, at which time the price was \$17,700 something, and

(Testimony of Arthur Williams.)

they asked me if I thought that was a fair [406] price for the repairs on that vessel. I concurred that it was a very fair price for the amount of work that had been done on the vessel, but I did not agree that the repairs effected on the vessel were attributed to an accident which I was called on to survey.

The Court: Did you state that? Did you say that you did not agree, or was that a mental feeling you had?

The Witness: No, I stated that in their presence, that I was not agreeable to that price, but was certainly agreeable to the price for the amount of work performed on the vessel.

Q. (By Mr. Callaway): When you saw the Bear on the ways, what did you observe about her condition?

A. When I went on the job, a large portion of the starboard side had been removed, and the condition of the frames, especially, were in a very rotten condition. When I say "rotten," I mean definitely a dry rot or a length-of-time rot.

Q. Do you have in your possession, and have you had in your possession any pieces of the wood that were taken out?

A. Yes, I took the opportunity to pick up some of the pieces of the frames of this vessel.

Q. Do you have those with you?

A. Yes. [407]

Q. Will you produce them, please?

(Testimony of Arthur Williams.)

Those were marked by you at the time?

A. Yes.

The Court: If you offer these in evidence, let's give them a mark for identification before you start talking about them.

Q. (By Mr. Callaway): How many do you have, Mr. Williams?

The Clerk: Three.

Mr. Callaway: I offer them in evidence, if the Court please.

The Court: All right. Any objection?

Mr. Shallenberger: I don't think so. I don't think any further foundation is necessary. I know Mr. Williams' reputation.

The Court: They will be received in evidence and marked Respondents' Exhibit next in order.

The Clerk: Respondents' Exhibits L, M and N.

(The objects referred to were marked respondents' Exhibits L, M and N, and were received in evidence.)

Q. (By Mr. Callaway): With reference to Exhibit L, is that part of the frame?

A. It is a portion of a frame here taken at the end where she is usually steam-bent, showing the condition where [408] some fastenings had gone through.

Q. The fastenings you see on Exhibit M, what does that indicate to you, the condition of the fastenings?

(Testimony of Arthur Williams.)

A. Right here is definitely a case of pure deterioration over a period of time (indicating).

Mr. Callaway: Indicating the nails or spikes, whatever you want to call it, on Exhibit M.

The Court: What is Exhibit M, what kind of piece is that?

The Witness: Piece of the bottom planking.

The Court: Planking on the hull?

The Witness: Yes.

Q. (By Mr. Callaway): Referring to Exhibit N, will that hold a nail at all?

A. Well, I think that question is answered right there, sir. I wouldn't say that it would hold a fastening.

The Court: What is N, what does it come from?

The Witness: Part of the framing.

Mr. Shallenberger: I don't know where the nail came from that Mr. Callaway fitted in there.

The Witness: It happens to be one of the fastenings of the vessel, sir.

The Court: By "framing," do you mean the ribs?

The Witness: Yes.

The Court: What thickness are the ribs? [409]

The Witness: That is a laminated rib there, and that is two 1 $\frac{1}{8}$ by 2 sections. However, that frame here is a full 2 by 3 framing, steam-bent.

The Court: How often in your experience could the side boards be taken off and nailed by on the same frames? Is there any number of times that could be done?

(Testimony of Arthur Williams.)

The Witness: Yes, it could be.

The Court: How many?

The Witness: It depends upon the condition of the frame, sir, how much it has been opened up by driving all the fastenings into the ribs, how much of a hole it would cause. It could stand about three times.

The Court: It is no different a problem than any carpenter would have in driving a nail to fasten one board onto another, is it?

The Witness: That is right.

The Court: In other words, if you drive a nail in and you hit a crack or knot-hole and it doesn't hold, you pull it out and drive it in somewhere else where it will hold, you can tell by the way the nail drives in whether it has been driven into another hole or whether it is being driven into solid wood?

The Witness: That is true. But if you take and drive a nail in here toward the edge of this board it certainly weakens this member; but if you drive it to the center here, [410] which is usually one-third of the distance from the edge, that is the good nailing spaces. You would get a nail to hold right on the very edge, but it would certainly weaken the frame.

Q. (By Mr. Callaway): Did you find this condition to be general throughout the Bear or was it just in isolated spots?

A. That condition was general throughout.

Q. Do you know how many of the ribs of the Bear were replaced or had sister frames inserted?

(Testimony of Arthur Williams.)

A. For the repairs?

Q. That was done on it, yes.

A. Yes, on the starboard side there were approximately 44 to 46 replaced; on the port side there were 44, what we term as the stub frame on the port side.

Q. What portion of the entire vessel did that involve?

A. That involved approximately from what we term frames 22, or about the 22-foot mark from the bow of the boat to almost 75 per cent of the length.

Q. In other words, 75 per cent of the length of the boat on both sides the frames were replaced, is that right?

A. No. Approximately 75 per cent on the starboard side frames were replaced by steam-bent frames running as far down as possible between the skin of the ship, the outer skin or the planking and the ceiling. On the port side 44 frames, or approximately 75 per cent of the length of the [411] ship was replaced in the bilge only, which were stub frames and averaged anywhere from 18 inches to 3 feet long. Those were sawn and not steam-bent.

Q. When the port side of the vessel was opened up, what did you find?

A. When the port side of the vessel was opened up we found that the entire bilge, which is the heaviest part of the vessel, or where the steam-bending frame takes the heaviest bend, the entire area was broken all the way through.

(Testimony of Arthur Williams.)

Q. In your opinion was that the result of this collision in any way? A. Definitely not.

Q. What was it the result of?

A. That was the result of just breaking over a period of time, possibly a strain from steam-bending, which very often is the case in steam-bending frames, you will fracture a frame in bending.

Q. So that we may understand what you are talking about, let's take the model and show us where these last frames were replaced on the port side.

A. On the port side of the vessel here, from here, this section in here, to here (indicating).

Q. All under the water line?

The Court: Indicating from the portion immediately below the light to the portion at the end of the guard rail. [412]

The Witness: Right. This section in here, from here to here, right at the water line was the fractured section.

The Court: Was there a similarly fractured section on the starboard side?

The Witness: On the starboard side it was fractured in here, also, but these frames in here were broken right in this area here (indicating).

The Court: Were the fractures around in the bilge that you are talking about, did they exist similarly on the port and starboard sides?

The Witness: Yes.

The Court: With the exception of these that you have just indicated that were broken up where the

(Testimony of Arthur Williams.)

collision occurred?

The Witness: Yes, they did.

Q. (By Mr. Callaway): Mr. Williams, did you have any discussion one way or the other with Mr. Sims about what repairs were to be effected, and why they were to be effected?

A. No, sir, none at all.

Q. Did you ever demand in this instance an itemized statement?

A. I called for an itemized statement from Harbor Boat Yard in order that we may finalize our report on the job. That was called for just after the job was completed, and we received a summary of the job for the total amount of [413] the cost of the repairs. However, the bill was not itemized as we requested or wished to have it, and we called them and requested an itemized statement.

Q. Did you ever get it? A. No, sir.

Q. Did you ever see an itemized statement?

A. No, I did not.

Q. I mean, you saw one that I handed you?

A. I saw one here this morning which you gave me around about 10:00 o'clock this morning.

Q. Let me ask you this question: In your opinion did the boat need these repairs that you have mentioned as being around the bilge, before any collision with any other boat?

A. That, sir, is a very hard question to answer in this——

Mr. Shallenberger: Just a moment, your Honor. I am going to object to that because it assumes a

(Testimony of Arthur Williams.)

fact which is not in evidence. There is not sufficient foundation for this man to answer that question.

The Court: I am going to sustain the objection on another ground. The way the question is framed, it is the question that the Court has to, probably, ultimately decide, were these repairs necessary as a result of this collision, did they need these repairs before the injury happened. [414]

You may inquire into the subject-matter, but I will sustain the objection to the way the question is framed.

Q. (By Mr. Callaway): After examination of this boat and statements, what, in your opinion, in dollars—first of all, I will ask you this: What in your opinion was the physical damage occasioned to the Bear as a result of this collision?

A. The physical damage, as I saw it, was the starboard side of the vessel damaged abreast of the pilot house at the after end of the pilot house, and that damage involved broken planks, ribs, bulwarks, the rail, portion of the rigging, the deck was jarred loose and the knees on the inside were jarred loose, and the hatch was strained.

Q. What, in your opinion, in dollars predicated upon what the Harbor Boat Works charged for all the work, would it cost to have made those last-mentioned repairs?

A. Those last-mentioned repairs, as I stated here now, I omitted one thing in that, also, on the port side the planking showed evidence of springing, that is, the seams were loose, and I would like to answer

(Testimony of Arthur Williams.)

it this way: If we were going to do the job and wrote it up for that amount of repairs to be done, we would have estimated—at least I would have estimated in the neighborhood of \$6500, or maybe \$7,000.

Q. By the way, on what basis was this work performed—on [415] a flat contract, cost-plus, or what?

A. That was on a time and material basis.

The Court: Do I understand you to say in going over the list of repairs that you say were the result of a collision, about the only thing that you haven't mentioned, at least generally, was the matter of these ribs, there may have been some other matters, but the major things you mentioned were included in the testimony of the other expert, do you mean to say that the putting in of the stub ribs, 18 inches to 3 feet in length, and the sister ribs on the other side, would come to \$10,000?

The Witness: No, sir. There are several other items in there. On the alignment of the engine, the length of time on the ways, the entire caulking of the deck.

The Court: You say the deck was strained and jarred loose?

The Witness: Yes.

The Court: That means you would have to caulk the deck, wouldn't you?

The Witness: Not the entire deck. It would depend upon the examination and how much would be arrived at.

(Testimony of Arthur Williams.)

The Court: What other major items would have to be taken into account?

The Witness: The alignment of the engine would be a major item, alignment of the intermediate shafting, which [416] would come under the alignment of the engine, that is another major item. Cleaning and painting is a major item.

The Court: Supposing you were doing that job or were supervising a job of that kind, and the boat would be stripped down to where you could see the condition of the ribs as you say they existed, and at the time you started the job that wasn't included in the price, but they said, "Why don't you go ahead and put those stub ribs in on the port side and the sister ribs on the starboard side, how much additional would that run the job, those two items?

The Witness: I think a safe figure there would be around about \$40 a frame.

The Court: By a frame you mean either a sister rib or a stub rib?

The Witness: Yes. That would be a general average.

The Court: Are you taking into account now that the boat has been stripped down, part of the hull is already off, the interior ceiling, or boards on the inside were off, it is all in a position to be worked on, you have to plank and cut the stubs for the sister ribs and you have to put them in?

The Witness: Right.

The Court: That would still be \$40 a frame?

The Witness: That would be a liberal estimate

(Testimony of Arthur Williams.)

The Court: Liberal which way? [417]

The Witness: For instance, in steam-bending frames there, you may break several in the course of bending.

The Court: That is all. Go ahead. Apparently it costs money to repair boats.

Mr. Callaway: Yes, it does. To build them, too.

Q. (By Mr. Callaway): Showing you Libelant's Exhibit 6, is that deck planking rotten or just disturbed? A. No, that planking is disturbed.

Q. What about the planking you see missing on the inside of the ribs there, is that rotten? That is Exhibit A, Respondents' A.

A. This section shows signs of being rotten, this here is definitely a break (indicating), this section here is rotten, this is rotten and split, this here is over-fastening, here is nominal fastening right here (indicating).

Q. In your opinion, would that portion of the boat need replacing before the collision?

A. I would rather answer that another way, if you don't mind.

Q. Go ahead.

A. If the boat was going up for sale and I were going to be the buyer, I would certainly request that to be replaced. We know that there are several boats on the ocean today that have very bad conditions, but nobody knows them. Maybe the master knows them, maybe some part of the crew knows [418] them, but there are several afloat that are in bad condition.

(Testimony of Arthur Williams.)

Q. Do you consider them unseaworthy?

A. Yes, sir, I do.

Q. What, in your opinion, Mr. Williams, was the reasonable time necessary to effect the repairs occasioned by this collision?

A. If the job had been set up for bids and put out for a bid for three yards, which is customary at times, I would estimate 35 days.

Q. I am not talking about effecting all the repairs; I am talking about those repairs which in your opinion were occasioned by the collision.

A. Occasioned by the collision, 25 working days.

Q. What do they work—a five-day week?

A. Five-day week.

Q. In other words, what you are talking about is that the boat yard guarantees completion within the period of time that you mention? In other words, where you put them up to bid——

A. A time requirement is requested at all times.

The Court: Is work impeded by rainy weather?

The Witness: The contractor, if he takes the bid on the job and he estimates the time on the job, he is held to that time.

The Court: That doesn't answer my question. He may be [419] held to the time, but in making the estimate does he take into account whether he can or cannot work on rainy days?

The Witness: Yes, as a rule he does.

The Court: And is it true that you can't work on rainy days?

The Witness: Outside work you can't work.

(Testimony of Arthur Williams.)

However, in a vessel you can work inside, you can work on the interior of the hull, certain crafts could work.

The Court: If the work was being carried on, that is, outside work, you would have to suspend during the rain?

The Witness: Yes.

Q. (By Mr. Callaway): Would you have to let it dry out after the rain, or could you start in again?

A. You would not necessarily have to wait. You could start in again.

Mr. Callaway: You may cross-examine.

Cross-Examination

By Mr. Shallenberger:

Q. Mr. Williams, you estimated 25 working days for the work that you believe to be necessary as a result of this collision, and you stated that would be true if the job were let out on bids, say, from three different yards, and I assume the low bid would take it—is that correct?

A. Not necessarily so, no. Putting a job out to bid or asking other yards to submit figures, the time requirement [420] is in there, and usually it is based on the time and the price. A yard may be a low bidder and he may want 10 days longer to do the job. However, the other yard may come out with a lower time and a slightly higher figure. Then that would be at the owner's request as to where it would go.

(Testimony of Arthur Williams.)

Q. All right. Mr. Williams, are you familiar with the Harbor Boat Building Company?

A. Yes.

Q. And you have been familiar with them in your work over a considerable period of time?

A. Yes.

Q. Do you regard them as a reputable yard?

A. I certainly do.

Q. Do you regard their work as good work?

A. Yes.

Q. Do you regard them as efficient?

A. Yes.

Q. Now, then, taking the job as they did, on a time and material basis, Mr. Williams, what would be your estimate of the number of days necessary to complete the work on the Bear that you determined to have been caused by the collision?

Mr. Callaway: May I have the question read, please?

(The question was read by the reporter.)

A. I am still not quite clear on the question.

Q. (By Mr. Shallenberger): Would you like it read again, Mr. Williams?

A. Yes. Not necessarily read, maybe—can you phrase it a little differently?

Q. All right. I will reframe it. Mr. Williams, you testified that the Harbor Boat Building Company took this on a time and materials basis, is that correct?

A. Right.

Q. Now, then, on that basis, how long do you

(Testimony of Arthur Williams.)

believe it would have been necessary at that time for the Harbor Boat Building Company to have completed the amount of work you have determined was necessarily caused by the collision?

A. I still think the job could have been done in the 25 days.

Q. I don't believe that is an answer to my question. Is it your answer that 25 days—is that the answer to my question?

Mr. Callaway: That is the answer he gave you.

The Court: No. He said the job could have been done. The question is what was a reasonable time for the Harbor Boat Yard on a time and material basis to complete the work, the repair of the damage he found to be caused by the collision.

The Witness: When I went on the job a large portion of the job was opened up already, therefore other work was [422] in progress. I would say—for instance, caulkers were working on the job at that time. This portion of the boat here (indicating) was opened up, and the work was going into effect. At that time with that particular job on the starboard side, I will still say that 25 days would have been a fair estimate, 25 working days.

Q. (By Mr. Shallenberger): Do you mean, Mr. Williams, that certain work having been done when you appeared on the job, that 25 days would be all that is necessary?

Mr. Callaway: Do you mean by that, Mr. Shallenberger—

Mr. Shallenberger: Perhaps the witness can an-

(Testimony of Arthur Williams.)

swer the question. If he doesn't understand it, he can tell me.

Mr. Callaway: I know you have no disposition to confuse him. Do you mean 25 more days, or do you mean 25 days in all?

Mr. Shallenberger: I think the question is intelligible. Would you read it again, please, Mr. Reporter?

(The question was read by the reporter.)

The Witness: Yes, after the boat was pulled up on the ways and the inspection made and the amount of work determined from that collision, 25 working days should be fair.

Q. (By Mr. Shallenberger): If the job were taken by the Harbor Boat on a time and material basis?

A. No, I don't quite get that question. I am sorry. That doesn't ring quite clear. [423]

Q. Mr. Williams, is the answer that you just gave me based upon the fact that the Harbor Boat Building Company was taking the job on a time and material basis? A. No.

Q. All right. What is it based on?

A. It is based on a time—if I were estimating that job, and figuring that it should go out to bids, that I would consider——

Q. Mr. Williams, perhaps I haven't made myself plain; I am sorry. I have no intention of confusing you. The premise of all of the questions, the whole group of questions that I have just finished asking you, is that it is not out on bid, that it is

(Testimony of Arthur Williams.)

on a time and material basis. Now, then, assuming that it is on a time and material basis, and that the Harbor Boat Building Company is going to do it, what in your opinion would be the length of time that would be necessary to do the repairs that you regard to be a result of this collision?

A. 25 working days.

Q. All right. Does that include the time of hauling her on the ways, inspecting her and determining what there is to be done? A. No.

Q. How many days would that take?

A. That I cannot answer you because I did not see the [424] condition of the boat prior to the 17th of December.

Q. As a matter of fact, Mr. Williams, you had never seen the Bear at all under any circumstances before the 17th of December, had you?

A. That is correct.

Q. And a while ago when you stated the condition of the vessel about the bilge area, that was based upon your seeing the vessel for the first time on the 17th or 18th of December, and after that, is that true? A. That is right.

Q. Not from any surveys made previous to that time or before the accident? A. Correct.

Q. And without reference to any survey made prior to that time? A. Correct.

Q. Then you would be unable to give me an estimate of the amount of time that would be necessary to haul the boat and inspect it and determine what was done, would you?

(Testimony of Arthur Williams.)

A. I could give you an approximate time to haul the boat, yes, but prior to the hauling of the boat what condition she was in, no, because I had not seen it.

Q. Mr. Williams, in your determining that it would take 25 working days exclusive of looking the vessel over and hauling it, I assume that 25 working days if the vessel were [425] put out on bid would be the same 25 working days, that wouldn't take into account the time for hauling and inspecting and so forth, would it? A. No.

Q. It wouldn't take into account the time necessary to get the bids in, either, would it?

A. No.

Q. Or for the bidders to inspect the vessel to base their bids, would it? A. No.

Q. Now, then, will you explain to me, Mr. Williams, why, when you made your original answer of how many days it would take, you said if it were put out on bids? Is there any difference?

A. I am afraid I don't follow you, again.

Q. All right. You stated 25 days to Mr. Callaway in answer to his question as to how long it would take to do these repairs that you considered to be necessary as a result of the collision, and then you qualified it and stated if it was put out on bid and the shipyards were called in to bid upon it. Now, what is the difference as to whether it was put out on bid, or as to whether it was given to one yard on a time and material basis?

A. If the vessel was to be put out for bid for certain repairs, the vessel would have to be in a posi-

(Testimony of Arthur Williams.)

tion for any [426] inspection to be made, and in this particular case the vessel would have to be on the ways for examination. Then, after the bids are let, the time is counted from the time the bid and the vessel is accepted into the yard of the contractor.

Q. Is that the only reason that there might be some difference between the number of days on a bid job, and the number of days on a time and material job?

A. Do you mean on the length of time for the boat coming up for inspection, or do you mean pertaining to the job itself after the job has been inspected and ready to go to work?

Q. We will assume, Mr. Williams, that the job has been inspected and they are ready to go to work, the bid let and the bidder ready to go to work, now, then, is there any difference in the number of days that bidder would take or would be reasonably necessary and the number of days that a party ready to go to work on a time and material basis would take? A. Yes.

Q. All right. What is that difference?

A. When a vessel is put out to bid, a contractor is usually penalized for the time that he runs over. A job that is on a time and material basis is certainly not under penalty. In the usual course of work going through any yard at all it is not customary to keep one entire crew [427] on that particular job, the work fluctuates in the yard and it

(Testimony of Arthur Williams.)

is necessary to pull a crew off and put them on other jobs.

Q. You were in and about this ship for a considerable period of time during December and January; do you believe that if the Harbor Boat Building Company had this job on a bid that they would have taken a lesser number of days to do the job?

A. I think they could have done it faster with a confirmed time element there, yes.

Q. But not faster than 25 days? A. No.

Q. In other words, when you give the estimate of 25 days, Mr. Williams, you are first of all leaving out the time necessary to obtain bids or to haul the vessel or to inspect the vessel, and you are assuming that the boat yard is going to put all the men they possibly can on that vessel without them getting in each others way, to finish it in just as short a number of working days as possible, is that true?

A. That is true.

The Court: I don't know whether you were asked this or not: You would also have to allow time, would you not, to open up the inside and outside in order to see what the damage was before estimates could be made? [428]

The Witness: Yes.

The Court: And, also, is there any practice as to the length of time that a shipbuilding yard takes in making the bid? Supposing you called a shipbuilding company to come in today to look at a vessel that was on the ways and had been opened up

(Testimony of Arthur Williams.)

and ready for inspection, how long a time would ordinarily be taken before you would get a bid back from them?

The Witness: In a case where it goes out to bidding, sir, usually a time is designated for the bid to be opened, which would normally be anywhere from a 24-hour period to maybe 3 days or 4 days.

The Court: In other words, it is fairly short, from 1 to 3 or 4 days?

The Witness: Yes.

Q. (By Mr. Shallenberger: Now, then, Mr. Williams, when were you first notified of the fact that the Bear was damaged, and that your office was called upon to attend?

A. When our office was called upon to attend?

Q. Yes.

A. The only thing I can refer to there is the notes that I have prior to my going on the job.

Q. All right. Do you have those?

A. That was on November 30th, I believe.

Q. November 30th, 1948? [429]

A. Right.

Q. But I believe your testimony is that your first visit was on December 17th or 18th?

A. Yes, sir.

Q. Now, then, you stated you were in attendance until January 11th? A. Right.

Q. 1949? A. Yes.

Q. Did you see the Bear after that time?

A. I saw the Bear in the month of February, around the 14th or 15th.

(Testimony of Arthur Williams.)

Q. That was when she was finished?

A. Yes, she was already in the water at that time.

Q. Now, then, Mr. Williams, you stated that when you viewed the Bear the condition of rot was general. Now, to what did you refer? Did you refer to the vessel generally or to certain portions of the vessel?

A. Mostly the framing, ribs.

Q. In other words, the framing, the ribs, that is the same thing, isn't it?

A. Yes.

Q. What did you mean by "rotten"?

A. A dry rot condition, soft.

Q. What is a dry rot condition? [430]

A. A soft, pulverized.

Q. All right, anything else?

A. No.

Q. Now, then, does that condition appear uniformly through the piece of timber, or is it in spots?

A. It can be spotted.

Q. In fact, it usually is spotted, is it not, Mr. Williams?

A. Yes, usually spotted.

Q. And in this case it was spotted, wasn't it?

A. Throughout the bilge it seemed to be fairly even.

Q. Fairly even spotted or fairly even throughout the timber?

A. Spotted throughout the bilge section on each timber.

Q. Did you bring any of that timber?

A. Only what we have here.

Q. Is that all from the bilge?

A. No. This here is a portion of the planking (indicating).

(Testimony of Arthur Williams.)

Mr. Shallenberger: All right. That is referring to Exhibit M.

Q. (By Mr. Shallenberger): Where did Exhibit L come from?

A. A portion of the after framing, right about the after end of the hatch here, I would say. [431]

Q. Not from the bilge area?

A. This can be termed—the whole area from here to here is termed as the bilge area.

Q. By that area you mean from at about the water line on back?

A. Right.

Q. Then this was taken from the bilge area?

A. Yes.

Q. Will you point out to me where the rot exists, if it does, in this exhibit?

A. Right through here (indicating).

Q. You wouldn't call that soft, would you?

A. I wouldn't call it soft, no, I wouldn't call it soft, but I certainly wouldn't say there was any life in the timber.

Q. You wouldn't call it pulverized, would you?

A. This section here, I would say, is not pulverized. Though here you have this condition (indicating). This here was definitely a break (indicating).

Q. This particular rib is not in bad shape, is it?

A. Not too bad, except for the fastenings through here.

Q. Let's stay on one subject. I will get the fastenings in a moment.

A. All right. [432]

(Testimony of Arthur Williams.)

Q. A rib or a frame is not necessarily a strength member of a vessel, is it?

A. Oh, yes, it is a strength member of the vessel.

Q. It is not a principal one?

Q. Not a principal one.

Q. In other words, as long as it can hold the planking and the fastenings it is performing its principal service, is it not, to the vessel?

A. Yes.

Q. What kind of wood is this?

A. That is oak.

Q. That is bent oak? A. Bent oak.

Q. Referring to the holes here, I assume those were made by the fasteners? A. Yes.

Q. I note that along most of these holes there are little split areas, up and down near the holes; that is customary in spiking bent oak, is it not, that there be little splits? A. Yes.

Q. No matter how new the oak is?

A. Right.

Q. Or how steam-bent, or anything else? There seem to be a number of holes up and down here, and I assume that [433] that is what you referred to when you said it showed overfastening, is that right?

A. Not in this particular case here, this is not overfastening. I was referring to a picture there.

Q. I will get the picture. In other words, this rib has not been over-fastened? A. No.

Q. But if you were to take the planking off and were going to put it back on, or put the new planking on, would you still want to use a rib with as

(Testimony of Arthur Williams.)

many fastening holes in it as this?

A. If the timber is in good condition you would plug these holes and refasten on the same timber.

Q. How many times could you do that, Mr. Williams? A. About three times with success.

Q. Would you say that the ribs taken from the area that this rib, this piece of rib Exhibit L, is taken from, were all in about the same condition as this Exhibit L?

A. No, I would not. Through the bilge area at the water line the fractures and the broken parts showed this condition here (indicating), or at the sub end of that end there (indicating).

Q. Which side, on the port side or starboard side? A. Both port and starboard.

Q. When you say they were in a broken condition, you [434] mean they were broken in two, is that correct? A. No.

Q. What do you mean?

A. Broken condition can be a fracture, which we would term as a broken frame.

Q. All right. Was that a tranverse fracture or longitudinal fracture?

A. That was a transverse fracture.

Q. Could that fracture occur from a blow?

A. On the port side of the vessel I would say no.

Q. On the starboard side?

A. Yes, in the area aft of the pilothouse to the hatchway were definite breaks resulting from a blow.

Q. On the port side you say no, that you don't

(Testimony of Arthur Williams.)

believe that any of it was fractured as a result of a blow, is that right?

A. I said resulting from a blow that planking on the port side was——

Q. I am talking now, though, about these ribs on the port side.

A. Do you mean the ribs we have in question now, that we are talking about now, at the port side of the bilge, were they the direct result from a blow?

Q. That isn't what I said, Mr. Williams. What I want to know is if—I thought it was your testimony that all of [435] the ribs on the port side that showed a fracture were, in your opinion—that fracture was not caused by a blow?

A. That is right.

Q. Is that your testimony? A. Yes.

Q. Upon what do you base that testimony?

A. By observations of the ribs.

Q. What did you observe that led you to believe that? A. Could I have a blackboard?

Q. I will get you a piece of paper. I don't know whether I can get you a blackboard or not.

A. A piece of paper is all right.

The turn of a bilge, this here through here, can be fractured partially into here, or halfway through, maybe the full part of the frame, the entire thickness. It also can be fractured through here, partially. Now, the frames in the bilge on the port side were in that condition. It wasn't a break as if you turned it over your knee and made a break. It was just a fracture. In steam-bending frames, you put it in

(Testimony of Arthur Williams.)

through here, and this very often fractures. However, the frame is not always condemned.

Q. In other words, these fractures you have termed on the turn of the bilge on the port side could have occurred at the bending of the frames, is that correct?

A. Not all of them, because that would not be good [436] practice. However, a few of them.

Q. They could have?

A. Yes, they could have, yes.

Q. And the only reason that you say that all of them couldn't have occurred that way is because you can't conceive of anybody putting a ship together with that kind of material, isn't that right?

A. That's right.

The Court: We will take a short recess at this time.

(A recess was taken.)

Q. (By Mr. Shallenberger): Mr. Williams, there are two kinds of rot, are there not, present in wood in a vessel?

A. Yes; there is dry rot——

Q. And wet rot? A. Yes, wet rot.

Q. Which is present in Exhibit L, dry rot or wet rot?

A. That would be a little of either.

Q. Dry rot is much what its name implies, isn't it, it just sort of dries up, crumbles and pulverizes away? A. Yes.

Q. Wet rot is something that is caused by mois-

(Testimony of Arthur Williams.)

ture over a continued period of time, without a chance to dry out or the sun to hit it, or anything of that sort, is that right?

A. If it dries out it would give the appearance of dry rot. [437]

Q. Now, then, isn't it true, Mr. Williams, that in any boat that is four years old or more, that you will find rot? A. Yes.

Q. And isn't it true that even in a boat that you term to be completely seaworthy that you will find rot? A. Yes.

Q. And isn't it also true, Mr. Williams, that the only way to determine the amount of rot in a vessel such as this vessel, in the place that you have indicated on the port side of the vessel, would be to take all the planking off?

A. No. A vessel could be bored or tapped, if you were looking for dry rot.

Q. If you were looking for wet rot, however, you would have to take the planking off?

A. No, you could find it through the same procedure.

Q. Would that procedure indicate the extent of the rot and the condition of the frames?

A. No. It would just determine whether there was any rotten condition in the vessel in that particular part that you are boring.

Q. But it wouldn't mean that there was rot above or below the particular position where you were boring, would it? A. No.

Q. So, to determine whether it would be nec-

(Testimony of Arthur Williams.)

essary to [438] replace those frames or ribs, it would be necessary to take the planking off, would it not? A. By all means.

Q. All right. Now, then, I show you Respondents' Exhibit A, which you testified with regard to a little while ago, and I believe that you said that this rib over here indicated over-fastening, is that correct? A. Yes.

Q. What do you mean by "over-fastening"?

A. Through here you have a series of holes, and normally the plank would run through here, probably have two or three fastenings in the plank which would run diagonally, here you have five or six, the same thing through here, the same thing through here, also in through here; there seems to be extra large holes through here, which would be the result of driving fastenings over and over again.

Q. In other words, possibly replacement of planks from time to time. A. It could be.

Q. But it doesn't mean that the rib has lost any of its virtue as a rib?

A. In this particular case here you have a broken condition up in here (indicating), you have a very bad condition here, where——

Q. That is on a different rib you are talking about [439] now, isn't it? A. Yes.

Q. You have a split condition on this second rib?

A. Yes.

Q. That could have been caused from over-fastening or a blow, or any number of things, couldn't it?

(Testimony of Arthur Williams.)

A. It could have been in there for years, it is quite possible.

Q. And the fastenings still held O.K., didn't they?

A. Well, on that particular frame I wouldn't say the fastenings were holding very much.

Q. If they don't hold fairly well the vessel would leak, wouldn't it?

A. Not necessarily so, not on one particular frame like that. To have that condition there and cause the vessel to leak, you would have to have it throughout the boat.

Q. In other words, if there was one frame like that, why, the vessel would still be a tight, sound vessel.

A. Yes.

Q. Isn't it true, Mr. Williams, that it is cheaper to put in sister frames at the present price of labor than it is to fill up the fastening holes and use the old ones?

A. If the frame is in good condition, I would certainly recommend plugging the old holes.

Q. But isn't it just as expensive, if not [440] possibly more expensive, to plug those holes than it is to put sister frames in?

A. Oh, no, I don't think so.

Q. Well, do you know what the price of that kind of labor is?

A. The rate that is being charged in yards nowadays, we always estimate it at \$3.50 per hour.

Q. And what length of time would it take for a man to plug up those fastening holes in a rib?

(Testimony of Arthur Williams.)

A. Where it is exposed, it would depend on how much is exposed.

Q. Well, assume that the entire rib is exposed, such as was exposed on the starboard side of the Bear.

A. A couple of men could go through the entire exposed area in a couple of days, very easily.

Q. Do you mean the entire exposed area of the starboard side of the Bear?

A. Where the frames were exposed.

Q. In a couple of days, eight-hour days?

A. Yes.

Q. And how much does it cost for one of these frames, these sister frames, that were put in?

A. The sister frames——

Q. Well, that is all that was put in were sister frames, they didn't make any complete replacement, did they? [441]

A. No; but there was stub frames on one side and seam-bent on the other.

Q. I am only talking about the starboard.

A. I gave an estimate just now, what I would figure would be about \$40 per frame, which would be a liberal estimate, taking everything into consideration.

Q. That includes the cost of the frame, the cost of putting it in, and so forth?

A. That's right.

Q. Now, then, Mr. Williams, did you inspect the main deck beams on the starboard side of the vessel Bear?

A. Yes.

Q. Did you find any of them splintered?

(Testimony of Arthur Williams.)

A. I found three of them splintered.

Q. Where were those beams?

A. Just about abreast of the hatch, right in this section through here, amidships.

Q. Isn't it true, Mr. Williams, that the entire vessel was wracked from stem to stern?

A. From my observation of the vessel, as I stated before, it was after she was up on the ways, and the condition prior to that time I can't answer.

Q. Her condition at the time you saw her, didn't it show a wracking from stem to stern?

A. It showed a jarred condition throughout the vessel, [442] yes, but not a wracking condition. A wracking condition existed around the main hatch.

Q. Well, that was the worst condition of wracking was around the main hatch, but didn't it show a wracked condition throughout the vessel?

A. No.

Q. You say it showed a jarred condition; what do you mean by that?

A. A jarred condition which would show up evidence on your deck where your seams were sprung, and on your hull planking where the seams were sprung, which would loosen the cement that is usually put in on top of the oakum.

Q. Didn't you just testify a few moments ago that it showed a jarred condition throughout the vessel?

A. Throughout the vessel?

Q. Yes.

A. Yes. That I would like to make clear, though, when you say throughout the vessel. I would term

(Testimony of Arthur Williams.)

this part here, through the amidships section, throughout the vessel.

Q. In other words, point out on this model what point you mean as to the jarred condition.

A. A jarred condition——

Mr. Roethke: The court can't see.

The Court: I can see.

The Witness: From amidships of the house to a point on [443] the after side of the bulwarks.

Q. (By Mr. Shallenberger): Aft the bulwark to the stern there was no jarred condition apparent from the decking? A. No, I didn't see any.

Q. Did you look for any?

A. I looked for a jarred condition or a condition here where the seams were sprung. However, when the table was removed the deck was definitely in evidence, a very patchy deck.

Q. What do you mean by that?

A. It had been repaired over a series—a period of time, short splices, short butts in there.

Q. From admidship of the pilothouse forward you didn't observe any jarring? A. No.

Q. Any wracking in the vessel?

A. On the starboard side I observed that the seams were sprung.

Q. How far forward were the seams sprung?

A. I would say about here (indicating).

Q. Indicating from the front of the wheelhouse.

A. Also, I want to state that a portion of this planking was out, which I did not see.

The Court: Indicating a portion amidships.

(Testimony of Arthur Williams.)

The Witness: This section right through here (indicating). [444]

Q. (By Mr. Shallenberger): Now, then, isn't it true that it was necessary to realign the engine and the shaft? A. Yes.

Q. Wasn't that as a result of the collision?

A. May I interrupt there just a moment?

Q. Yes.

A. You said—repeat the question. Maybe I can answer it a little better.

(The question was read by the reporter.)

The Witness: I don't want to answer that question the way I answered it, for the simple reason I was not there when the engine was realigned. However, it would be customary to check the alignment of the engine.

Q. (By Mr. Shallenberger): That is always customary after a collision, isn't it?

A. That is right.

Q. And if it needs realigning, then it is realigned? A. Yes.

Q. I believe when you went over the matter with the court in stating what you did not believe was necessary as a result of this collision you included the engine alignment, didn't you?

A. I wasn't aware of it if I did say it.

The Court: You excluded it. In making your estimate of \$6500 to \$7000 you excluded the alignment of the engine [445] and the shaft.

The Witness: I don't remember doing that. That should have been included.

(Testimony of Arthur Williams.)

The Court: Would your figure be the same?

The Witness: Yes, sir.

Q. (By Mr. Shallenberger): Mr. Williams, isn't it also customary after a collision, when it has been necessary to remove a great deal of the planking and to do the work that was necessary to be done on this boat, that it be repainted?

A. New work should be painted, yes.

Q. Did you include that painting in the item of six thousand some odd dollars that you gave?

A. Yes.

Q. As a matter of fact, about the only items that you left out in reaching your figure were the stub frames on the port side and the calking on the fore-deck and afterdeck, isn't that true? A. No.

Q. What else did you leave out?

A. The entire hull was refastened and recalked, the entire deck was recalked.

Q. I said that you left out the afterdeck and the foredeck. A. The entire hull?

Q. No, no. Of the deck. It was my understanding from [446] what you said that the deck was jarred and opened up from here, just after of the bulwark, to up amidship of the pilothouse, isn't that true?

A. From admidships of the pilothouse it was jarred loose to the after end of the bulwarks, is that right?

Q. I don't know. Was it?

A. That is right, that is the part that was jarred loose.

(Testimony of Arthur Williams.)

Q. All right. It was necessary to recalk that part, wasn't it? A. Yes.

Q. On the starboard side planks were sprung, I believe you said, from the forward end of the wheelhouse on back to the bulwarks, the after bulwarks, is that not true?

A. From the forward end of the wheelhouse here?

Q. I think that is what you said.

A. Yes, to the after end of the bulwarks, that is right.

Q. It was necessary to recalk that part of the hull, wasn't it?

A. That portion of the hull had to be replanked.

Q. It had to be recalced, too, didn't it?

A. It had to be recalced.

Q. You couldn't send it out to sea with just planking on there, no calking, could you? [447]

A. That's right.

Q. Now, then, there were some planks sprung on the port side? A. Yes.

Q. Where were those planks?

A. Right in the turn of the bilge.

Q. How high? A. At the water line.

Q. From the water line which way?

A. On both sides.

Q. All right. From the water line down and the water line up?

A. It took a portion of about four planks in the turn of the bilge.

The Court: May I ask was that at the same

(Testimony of Arthur Williams.)

place that you found the breaks in the frames?

The Witness: Yes, sir.

The Court: Do you attach any significance to the fact that the planking was sprung at the same place that the frames were broken?

The Witness: Yes, sir.

The Court: What significance do you attach to that?

The Witness: I attach—in my opinion the frames along the turn of the bilge on the port side had been broken for some period of time leaving a weakened condition through [448] there.

The Court: And, therefore, because of the break there the planking was sprung?

The Witness: Yes, sir.

The Court: Is it your statement that none of those breaks occurred at the time of the collision?

The Witness: In my opinion the breaks were not caused by the actual hitting of the vessel.

The Court: You say that none of them were caused by hitting of the vessel?

The Witness: I don't think so.

The Court: None of them?

The Witness: No. That is, the actual breaks and the fractures in the frames on the turn of the bilge on the port side.

The Court: Go ahead.

Q. (By Mr. Shallenberger): These planks that were loosened on the port side, it was necessary to paint and recalk those, was it not?

(Testimony of Arthur Williams.)

A. It was necessary to refasten, repaint and recalk, yes.

Q. Didn't it also spring some of the seams on the port side where it wasn't necessary to renew the planking, open up some of the seams?

A. There was evidence of some of the seams being sprung, [449] yes.

Q. Wouldn't it be accepted practice to ream out the calking and recalk those?

A. It would be accepted practice.

Q. Now, then, Mr. Williams, is it your testimony that to recalk the afterdeck, the forward part of the deck, and to put the stub frames on the port side and paint the portion of the vessel where there has been no work that you believe necessary by reason of the collision would come to \$10,000?

A. No.

Q. And yet you say that \$17,700 was a very fair price for the amount of work that Harbor Boat Building Company did?

A. For the repairs on the vessel as I saw it, yes.

Q. Now, then, do you believe that the Bear at the time you saw it on the 17th or 18th of December was in about the same condition as it was on the 30th of November when it was hauled?

A. I am not quite clear on that question.

Mr. Shallenberger: Repeat the question.

(The question was read by the reporter.)

The Witness: I am not in a position to answer that, because I didn't see when it was hauled.

Q. (By Mr. Shallenberger): Well, would the

(Testimony of Arthur Williams.)

fact of hauling it and putting it on the ways change its condition with regard to the damage that you observed on the 17th or [450] 18th of December?

A. In the process of repairing the vessel, and from the time I saw it, a portion of the damage extending through on the starboard side was very much in evidence, a portion of the vessel had been removed, a portion of the planking had been removed that showed, as I have described here, sections in here where the seams were loose, sprung, to make those necessary repairs and observing the port side, finding out what was wrong that they could not refasten because the fastenings would not hold, therefore it was necessary to pull one of the planks, and when one of the planks was pulled it was observed that this broken condition and rotten condition existed through the bilge line, making it necessary to pull another frame; and in order to get good fastening on the planking it was necessary to put in good material to hold the fastening.

The Court: Did you see the boat after the stubs were put in on the port side?

The Witness: Yes, sir.

The Court: Were they fastened securely?

The Witness: They were fastened securely, they were fastened back into the ceiling of the vessel and edge fastened into the old frames.

The Court: I thought you said the stubs were 18 inches to 3 feet in length? [451]

The Witness: Right.

(Testimony of Arthur Williams.)

The Court: If they were not more than 3 feet, what do you mean by ceiling?

The Witness: The ceiling is the inside portion of the vessel.

The Court: Do you mean the board placed on the inside of the frame?

The Witness: That's right.

The Court: Were the stub frames nailed to the old frames that were replaced?

The Witness: They were edge bolted to the old frames.

The Court: What do you mean by that?

The Witness: The other frame rammed along-side and edge bolt through here, wherever they could find a fairly good spot to get a good fastening.

The Court: Were the stub frames in there securely?

The Witness: The stub frames, they were in there fairly securely.

The Court: And securely fastened to the old frames?

The Witness: They were mostly fastened to the ceiling here and the rest on the planking.

The Court: The ceiling one nailed on one side and the planking on the other?

The Witness: Yes.

The Court: I am asking now whether they were fastened [452] to the old ribs in there.

The Witness: They used some fastening through the old ribs, but they didn't get too much success in getting good fastening there.

(Testimony of Arthur Williams.)

The Court: Go ahead.

Q. (By Mr. Shallenberger): Mr. Williams, the figure you gave of six thousand some odd dollars did not include the haul out or the ways charges, did it?

A. Prior to inspection, it would have included the haul out the second time.

Mr. Shallenberger: That is all.

Redirect Examination

By Mr. Callaway:

Q. Mr. Williams, you say in your opinion the break of these frames on the port side were old breaks. Will you state why?

A. Why I thought they were old breaks?

Q. Yes. A. Just from observation.

Q. What observation did you make and what did you see that made you think they were old?

A. By looking at a frame you can usually tell if it is a new break or an old break.

Q. How can you tell? Give us the facts, what you saw. [453]

A. By the dirt and the filth that would be lodged among the members would be one, the discoloration would be another.

Mr. Callaway: That is all.

The Witness: I think this will answer that question much more than I can explain it to you, sir. (Witness showing exhibit.) There is definitely an old break.

(Testimony of Arthur Williams.)

The Court: Referring to Respondents' Exhibit L.

The Witness: Here is definitely an old break through here; this here is caused definitely by rust coming over a period of time working into the timbers, and rust is a very serious thing on any boat.

The Court: At this end here would you say there was an old break there and a new break around the outside?

The Witness: This could be termed as a new break in here, but it is dead wood.

The Court: This interior looks as if it is an entirely different aged break than the break around the outside?

The Witness: That's right.

The Court: Doesn't this look like a new break on the outside?

The Witness: This section here is the new one (indicating); this is the old one; this is a broken timber right here.

The Court: You would say that this interior portion [454] looks like a newer break?

The Witness: This portion here, I would term that as a newer break.

The Court: Than the portion on the outside?

The Witness: Yes.

Mr. Callaway: Your Honor, I think you could break a piece off of that.

The Court: Would you say there was a differ-

(Testimony of Arthur Williams.)

ence in age of breaks from the end here, from the interior portion and the portion on the outside?

The Witness: That would be hard to say here, on that little portion shown here. On these two here, I would say yes, this and this (indicating).

Mr. Callaway: I have nothing further.

The Court: I have a couple of questions.

It was necessary because of the collision, was it not, to insert some of the sister ribs on the starboard side?

The Witness: It was necessary to put a lot of the frames on the starboard side there to hold the new planking that was being put back on. The old ribs that were on there would not hold the fastening.

The Court: Some of them were actually broken, were they not, by the collision?

The Witness: Yes, sir.

The Court: How many ribs on the starboard side would you [455] say were necessary for repair of the vessel?

The Witness: On the starboard side I will have to make that purely a guess, as I say, some of those were removed before I got on the job. I would say 12, maybe 14.

The Court: How many were actually put in?

The Witness: 44.

The Court: Taking into account those matters of repair and renovation which upon cross-examination you admitted to counsel were customary or were usual, or were reasonably necessary, as well as taking into account the items that you listed

(Testimony of Arthur Williams.)

before, namely, the starboard side abreast of the pilothouse, the fact that the deck was jarred loose, the hatch was strained on the port side, some of the planking and the seams were loose, would you want to change your estimate of the reasonable value of doing that work?

The Witness: Only change it to the point that the actual damage that was done from the report that I received from the other party of our office who was in attendance first on the job, I would estimate the job could have been done in a shorter time for the actual damage.

The Court: What I am getting at is you listed certain things and you estimated \$6500 or \$7000, and then on cross-examination you conceded that there were other things that would reasonably be done, that were ordinarily done, that were reasonably necessary, there was various language [456] used; wouldn't that increase the estimate, the cost of the work as you estimated it? Or did you have those all in mind and didn't mention them at the time you gave your original estimate?

The Witness: It is quite possible, I didn't mention several things in there on the repairs in general as I saw it on the vessel. Refastening of the hull, I mentioned that there, it was completely re-fastened. The garboards were taken off.

The Court: That is all. I have no other questions.

Mr. Shallenberger: I have another question or two.

(Testimony of Arthur Williams.)

Recross-Examination

By Mr. Shallenberger:

Q. Were you there before the garboard strakes were taken off? A. Yes, I was.

Q. And it is your opinion that it wasn't necessary to remove the garboard strakes by reason of the collision?

A. I wouldn't have removed them.

Q. You say you wouldn't have removed them. Is there room for doubt as to whether some other competent person might have considered it necessary to remove them?

A. Well, there is room for doubt, yes, there could be room for doubt.

Q. In other words, in your opinion some other surveyor [457] might have considered it necessary to remove them, and you wouldn't say he was wrong, would you?

A. Oh, no. The only thing I would question is as to why they were being removed. However, another surveyor is entitled to that thought, if he thinks there is something wrong there he certainly has the right to ask them to be removed.

Mr. Shallenberger: Nothing further.

The Court: You are excused.

Mr. Callaway: Your Honor, we haven't a prayer of a chance to finish this case today. My direct examination was 15 or 20 minutes, of the last witness. What are we going to do?

The Court: You are a little conservative, coun-

(Testimony of Arthur Williams.)

sel, because the cross-examination was longer. We have to finish this case some time, you know.

Mr. Callaway: I know. I have had my witnesses here every day.

The Court: How many more witnesses do you have?

Mr. Callaway: Eight. I don't think we need to put them all on.

The Court: You have called Borcich and the engineer. Who else was on the bridge of this boat?

Mr. Callaway: Zitko.

The Court: Three of them on the bridge, one in the [458] pilothouse and two on the bridge.

Mr. Callaway: Maybe we can work it this way. I can put on Zitko and Kuljis, the man that was on the bow, and I want to put on one other short witness, and it might be that we could stipulate as to the location of the other men on the boat and as to what their testimony would be. One, two, three of the crew did not see the collision.

The Court: And they are here, are they part of your eight?

Mr. Callaway: Yes.

The Court: What could they help us on?

Mr. Callaway: They know some of the details following. I don't think they are particularly important. Anyway, let's go ahead with this one.

The Court: Let's go on, we will go on to 4:30, and if necessary we will start at 9:00 o'clock in the morning.

(Testimony of Robert T. Petrovich.)

ROBERT T. PETROVICH

called as a witness by and on behalf of respondents, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Callaway:

Q. State your name, please.

A. Robert T. Petrovich.

Q. Keep your voice up. You can talk louder than that. [459] What was your position on the crew?

A. I was cook.

Q. Where were you on November 30th, 1948, when this accident happened?

A. I was in the galley, in the window, leaning leaning over the window in the galley.

Q. On what side? A. Sir?

Q. On what side of the galley?

A. On the starboard side.

Q. Was the Marsha Ann, just before the collision, moving or standing still?

A. The Marsha Ann was standing still.

Q. How long had she been in that position?

A. Practically about four or five minutes, as far as I can recall, I know we was standing still.

Mr. Fall: Will you keep your voice up, please? May I have the answer?

(The answer was read by the reporter.)

Q. (By Mr. Callaway): Here is the Marsha Ann. Where were you?

(Testimony of Robert T. Petrovich.)

A. I was right here (indicating). Here is the galley. Right at the window.

Q. On that side of the boat or the other side?

A. On this side of the boat (indicating). [460]

Q. Then you mean the port side.

He indicated the port side. He said "starboard."

Port side is your left-hand side, and starboard is your right-hand, if you are facing toward the bow of the boat.

A. I was on the left-hand side. Isn't that starboard side?

Q. No. That is port.

The Court: It is a good thing he is your cook.

Q. (By Mr. Callaway): Tell us what you know and what you saw.

A. I saw more than that.

Q. What did you see?

A. A man holler at the bow, he holler, "Back up, back up." At the time he holler "Back up," I got out of the galley and walked up to the bow.

Q. What did you see?

A. I see stern of the Bear like that (indicating), in that position.

The Court: Indicating—what angle is that, 45°?

Mr. Callaway: Just about.

The Court: Indicating the Marsha Ann in contact with the Bear at about a 45-degree angle.

Q. (By Mr. Callaway): Then what?

A. Bear back up and he come back along this side of us (indicating). [461]

The Court: Indicating the Bear moving back

(Testimony of Robert T. Petrovich.)

and around to be alongside of the Marsha Ann, I guess.

Mr. Callaway: Yes.

Q. (By Mr. Callaway): Prior to the time you heard somebody say "Back up," or words to that effect, had there been a collision?

A. I don't know who he was holler, "Back up." I thought he holler to our skipper or the other skipper, I couldn't say that, because I know what man was it that holler, because I can recall his voice.

Q. Who was that? A. Steve Kuljis.

Q. Were you conscious of the two boats coming together? Do you know what I mean by that? Do you know when the two boats hit? A. Yes.

Q. Was that before he said "Back up" or afterwards?

A. He was holler, just about the time they hit.

Q. Before the two boats came together did you hear your vessel giving any whistle signal?

A. Yes, sir, he was whistling right along.

Mr. Callaway: You may cross-examine.

Cross-Examination

By Mr. Roethke:

Q. Mr. Petrovich, you say you were leaning out of the [462] galley window for four or five minutes prior to the——

A. I was leaning out a whole lot before the thing happened.

Q. I see. But did you continue to lean out of

(Testimony of Robert T. Petrovich.)

the galley window for four or five minutes prior to the collision?

A. Not prior to the collision. When the man holler "Back up, back up," and at the same time it hit, I was running to the bow.

Q. Let's go back. At the time you heard the man holler "Back up, back up," what were you doing?

A. I was leaning over the window.

Q. All right. How long prior to the time you heard him shout "Back up, back up" had you been leaning out of the window?

A. How long? How long can he holler "Back up, back up"? Three, four times.

Q. Do I understand your testimony to be that you stuck your head out of the window when you heard him holler?

A. I was leaning out of the window before he was hollering.

Q. For how long a period of time had you been leaning out of the window before he hollered "Back up"?

A. How long before?

Q. Right. [463]

A. Practically about five or ten minutes, I couldn't recall exactly, but I was leaning over the window, because there was so many whistles coming in and out that I was anxious to see what is going on, because I had to take care of my cooking, also.

Q. For the 10 minutes preceding the collision, or five minutes, you didn't take care of your cooking, you were leaning out of the window?

A. You forget about the cooking.

(Testimony of Robert T. Petrovich.)

Q. You didn't walk out on deck?

A. I certainly did, when he start hollering, "Back up," in the meantime there was crash right there.

Q. Had you gotten out of the galley by the time the Marsha Ann struck the Bear?

A. Marsha Ann didn't struck the Bear; the Bear struck the Marsha Ann.

Q. Had you gotten out of the galley at the time of the impact? A. Repeat, please.

Q. Had you come out on deck from the galley at the time the two vessels hit? A. Yes.

Q. You were out on deck before they came together? A. Yes, sir. [464]

Q. Where did you come, will you show on the model?

A. The door is right there (indicating), right out of here. It only takes a second.

Q. And you started running right to the front of the vessel?

A. Right to the front of the vessel.

Q. Where were you at the exact minute when they came together, can you tell me?

A. Right back of the door there.

Q. How far is it from the door of the galley to the bow of your ship?

A. I don't know the measure of it.

Q. Can you estimate it?

The Court: About half way?

The Witness: It is about half way, yes.

(Testimony of Robert T. Petrovich.)

Q. (By Mr. Roethke): Would it be 40 or 50 feet? A. Just about, yes.

Q. How long is the Marsha Ann, Mr. Petrovich?

A. I really don't know. It is about 100 feet or 104.

Q. You figure you were about 40 feet abaft the stem of the Marsha Ann when you emerged from the galley door? A. Yes, sir.

Q. Were you able to form any estimate of the distance of visibility at the time you emerged from the galley door? [465]

A. I see it when she was right there, at the time she was hit.

Q. When you came out of the galley door you could see the bow of your vessel? A. No.

Q. You couldn't see the bow of your vessel when you came out of the galley door?

A. No, but I see the stern of the Bear.

Q. Could you see the front part of the Marsha Ann at the time you came out of the galley door?

A. Naturally I see it up here.

Q. You could see 40 feet?

A. That is right.

Q. Could you see any beyond 40 feet?

A. Probably a little bit. I see the black Bear because Bear is painted black, and I see the Bear right along as I coming out.

Q. Could you see her down in the water, the water line, or what part of the Bear did you see, Mr. Petrovich?

(Testimony of Robert T. Petrovich.)

A. I didn't look at the water line until he come along the side of it.

Q. In other words, you were merely looking at the superstructure, at the pilothouse, when you came out? A. Yes, sir.

Q. You couldn't see the hull of the Bear at that time? [466]

A. I see the stern of it from this side.

Q. Where was the stern of the Bear?

May we have the two models, Mr. Callaway, please?

Mr. Callaway: Yes, sir.

Q. (By Mr. Roethke): Mr. Petrovich, using these two models, considering the larger of the two to be the Marsha Ann and the smaller of the two to be the Bear, will you place those in the position that they occupied at the time you first saw the Bear after coming out from the galley?

(Witness does as requested.)

The Court: Indicating the Marsha Ann's bow in contact amidships with the Bear at about a 45-degree angle.

Q. (By Mr. Roethke): Mr. Petrovich, did you proceed from the galley door up to the forecastle head of the Marsha Ann? A. Yes.

Mr. Roethke: Indicating he proceeded to the forecastle head of the Marsha Ann.

Q. (By Mr. Roethke): How long did you remain at the forecastle head of the Marsha Ann?

A. Do you mean how long did I stay there?

(Testimony of Robert T. Petrovich.)

Q. Yes.

A. Practically until the Bear backed up and got on the side of him, and we got it secure to pull it in.

Q. How long was that, Mr. Petrovich? [467]

A. I can't recall the time.

Q. Was it a half hour?

A. A good half hour, and then maybe some; I can't tell.

Q. At the time you came out on the fore-castle head of the Marsha Ann, was the Marsha Ann making any headway through the water?

A. No, sir.

Q. How do you know that she wasn't, Mr. Petrovich?

A. It wasn't possible, she was standing still before——

Q. How do you know she was standing still?

A. The engine isn't running, and if I don't hear it in the galley, then nobody can hear it, because that is the noisiest place on the boat.

Q. Do I understand your testimony to be, Mr. Petrovich, that if the engine isn't running the Marsha Ann could have no movement through the water?

A. No, unless she was traveling with the currents.

Q. Well, if they turn off the engine right now, and you are making four or five knots through the water, does that mean that the Marsha Ann is going to come to an immediate stop?

(Testimony of Robert T. Petrovich.)

A. But we were standing still for four or five minutes, anyhow, that I know; maybe more.

Q. How did you determine that you were standing still? [468]

A. How do I determine?

Q. Yes.

A. I wasn't in the galley. I know it was standing still.

Q. I am asking you how did you determine it. Did you have any point of reference to take a sight on to tell that you weren't moving?

A. The engine is standing still.

Q. I appreciate that.

The Court: That is why you think the Marsha Ann was standing still?

The Witness: Yes, I think the Marsha Ann is standing still.

Q. (By Mr. Roethke): Now, after you came up on the forecastle head of the Marsha Ann and saw the vessels in these relative positions, how—

A. I find it in this relative position (indicating).

Q. I didn't mean to rearrange them. How long did they remain in that position, Mr. Petrovich?

A. Not very long. I couldn't tell you exactly the moment or minute, because they started right back backing up and securing the Bear.

Q. Did they remain in that position for a matter of five minutes?

A. Possibly. [469]

Q. Approximately five minutes in that position?

A. Possible.

Q. After they remained in that position four or

(Testimony of Robert T. Petrovich.)

five minutes, what position did they assume in reference to one another?

A. Well, then I noticed the Bear was backing up and coming alongside the Marsha Ann this way, then we secure him and tow him in.

Q. And you figure that it took you maybe a half hour to complete the——

A. I couldn't exactly recall, because I don't never time up anybody what they are doing on board a ship.

Mr. Roethke: I have no further questions of Mr. Petrovich.

Mr. Callaway: Nothing further.

The Court: Let me ask a question.

Did you feel the collision occur?

The Witness : I feel after I got out, yes, actually.

The Court: I don't care where you were, sitting down or standing up, did you feel the two boats come together?

The Witness: Yes, sir.

The Court: What did it feel like.

The Witness: Like sort of a crash-like, like you get hit. Not very heavy, just sort of a smash-like.

The Court: Where were you at that moment?

The Witness: I was out of the galley going towards the [470] bow.

The Court: You were walking at the time?

The Witness: That's right.

The Court: You say you were cooking something down in your galley?

The Witness: Yes.

(Testimony of Robert T. Petrovich.)

The Court: What did you have on your stove?

The Witness: I can't remember now. I really don't.

The Court: When you got back to the galley had anything been spilled off your stove?

The Witness: No.

The Court: Nothing spilled off your stove?

The Witness: No. It wasn't a very big jar.

The Court: Did you have anything on your stove cooking?

The Witness: I have something cooking, but I can't recall, because it was around 11:00 o'clock and I was getting ready for lunch.

The Court: Are you still employed by the Marsha Ann?

The Witness: No, sir.

The Court: Who do you work for now?

The Witness: I work for the Sunshine Meat Company.

The Court: That is all.

Mr. Callaway: That is all.

Mr. Fall: If the court please, the libelants at this time offer in evidence the model of the fishing boat that has [471] been used so extensively in this case for reference as Libelant's next in order in evidence.

The Court: Is there any objection?

Mr. Callaway: Yes, sir, there is an objection.

Mr. Shallenberger: It is stipulated it may go in.

Mr. Roethke: I stipulate it may go in.

Mr. Callaway: There is an objection. I brought

that here with the express understanding that it wouldn't go in evidence.

Mr. Fall: I had one used the same way before Judge Hall——

The Court: And you lost a boat.

Mr. Fall: And he insisted that it go in, it had been used so much, and the record certainly is not clear unless the vessel itself is in evidence.

We will enter into another stipulation, that it may be withdrawn at the termination, upon the finality of the case.

Mr. Callaway: Why not do it this way? I will furnish a photostat of it.

Mr. Roethke: The photographs aren't the same thing.

Mr. Fall: We have referred to the position of lights port side and starboard side, the wheel, and we are in a position where the record itself is in a state of confusion without it being in evidence.

The Court: I think the clerk will take good care of it, [472] and it can be returned to you eventually.

The Clerk: I would suggest that it be put in as a respondent's exhibit, so that it could be returned to Mr. Callaway.

Mr. Fall: Yes, so it could be returned to Mr. Callaway.

The Clerk: Exhibits are returned when the judgment is final, as a matter of course.

Mr. Callaway: This is off the record.

(Discussion had off the record.)

The Court: We have tried to identify it from

time to time, we have referred to the light, or the end of the bulwark, which doesn't fully describe it unless you have got something; but I think a photograph of both sides of it ought to do it, don't you think so counsel?

Mr. Callaway: One starboard and one port.

The Court: I think a photograph of it would take care of it.

Mr. Roethke: I would think so, if the court please.

Mr. Fall: I have no objection.

The Court: Where can you get photographs of it?

Mr. Callaway: I will have somebody make them.

The Court: All right. We will admit the photographs when you have them produced, in lieu of the boat.

Mr. Shallenberger: As long as we are on that subject, I assume, Mr. Callaway, that you intend to introduce those [473] pictures that you have had marked for identification?

Mr. Callaway: There is only one. I will be glad to introduce it right now.

Mr. Shallenberger: Is that the only one that hasn't been introduced?

Mr. Callaway: Yes.

The Court: Received as Respondents' Exhibit K.

(The photograph referred to was marked Respondents' Exhibit K, and was received in evidence.)

Mr. Callaway: Do you want this sketch that he

made in connection with the fracture of the boat?

Mr. Shallenberger: I don't think it is necessary.

The Court: Have you time to call another witness tonight?

Mr. Callaway: I can start one.

The Court: What about 9:00 o'clock tomorrow morning?

Mr. Shallenberger: That is satisfactory with me, your Honor.

Mr. Callaway: It is all right with me.

The Court: Do you think we can get through in an hour and a half? These will be short witnesses, won't they?

Mr. Callaway: Yes. I am going to put on the man on the bow and the other man who was on the bridge. The rest of them I am going to—and I have a very short witness on one other point. [474]

Mr. Shallenberger: We have a very short rebuttal.

The Court: I haven't any doubt that you gentlemen can conclude this case in an hour and a half if you wanted to. Of course, those two witnesses are important from the respondents' standpoint, because they probably were eye-witnesses to the collision. But we have spent a lot of time here, which I will be very frank to say, is not adding too much to the Court's knowledge of this case.

Mr. Shallenberger: I am sorry if I took up too much time on the cross-examination.

The Court: I am not criticizing anybody, but it is one of those things where we estimated a case to run so long, and it has just taken longer to try it.

Mr. Roethke: Your Honor, I didn't estimate this case at two days, I want that clear. I maintained it would take four or five days, because I have tried these cases before.

The Court: Let's lay it onto Mr. Fall. I don't know whether he did it or not, but he is a likely character.

Nine o'clock tomorrow morning.

(Whereupon, at 4:20 o'clock p.m., Wednesday, December 14, 1949, the cause was continued to reconvene at 9:00 a.m., Thursday, December 15, 1949, at which time, due to the death of the Judge's father, the cause was continued to 3:00 p.m., Monday, December 19, 1949.) [475]

Monday, December 19, 1949—3:30 P.M.

Mr. Shallenberger: If the Court please, there are certain witnesses sitting in the courtroom by consent of counsel. It is perfectly all right.

The Court: All right. Call the case.

The Clerk: No. 8960-C Admiralty, Joseph An-cich, and others, v. the Marsha Ann, and others, further trial.

Mr. Callaway: Ready.

Mr. Shallenberger: Ready.

The Court: Proceed.

STEVE KULJIS

called as a witness by and on behalf of the respondents, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Steve Kuljis.

Direct Examination

By Mr. Callaway:

Q. Were you a member of the crew of the Marsha Ann on November 30, 1948, when there was a collision between that boat and the Bear?

A. Yes, sir.

Q. Where were you stationed on the Marsha Ann just before the accident? [477]

A. I was on the bow, lookout.

Q. How long had you been on the bow?

A. About 15, 20 minutes.

Q. Where did you take your station on the boat, where was the boat?

A. In about midway of Fish Harbor to the lighthouse.

Mr. Roethke: I didn't hear that answer, Mr. Callaway.

(The answer was read by the reporter.)

Q. (By Mr. Callaway): Hold your voice up, Steve, if you can, please, as if you were talking to Mr. Sims back there.

Who stationed you on the bow?

A. Right on the bow.

(Testimony of Steve Kuljis.)

Q. Who told you to go there?

A. Skipper.

Q. What was the condition of the weather?

A. Fog was pretty thick.

Q. Steve, at the time of the accident, was the Marsha Ann moving or standing still?

A. We was standing still.

Q. How long had you been standing still?

A. Approximately about five, six minutes.

Q. How far could you see at that time?

A. Not very far, about 25 feet.

Mr. Shallenberger: About what? [478]

(The answer was read by the reporter.)

Q. (By Mr. Callaway): Where did you first see the Bear?

A. He was about 25 feet away from us.

Q. What part of the boat did you see first?

A. Bow.

Q. Could you see the pilothouse?

A. I saw the bow first, you see, and in a little while after I saw the pilothouse, too.

Q. In what direction was the Bear coming towards you? A. Right at our bow.

Q. What did you do when you saw the Bear?

A. I hollered at the guy, on the skipper, you see, to back up.

Q. Of what boat? A. Of the Bear.

Q. Had you heard anything in the direction from which the Bear came before that?

A. I heard the exhaust of the engine.

(Testimony of Steve Kuljis.)

Q. Did you say anything to——

A. I said to Jack, "This boat isn't very far, because I hear the engine."

Mr. Shallenberger: May I have the answer, please?

(The answer was read by the reporter.)

Q. (By Mr. Callaway): Was any whistle signal being given by your boat? [479]

A. He was blasting now and then, often.

Q. What happened after you sighted the Bear?

A. When I saw the Bear he come right on top of us all at once, it was just in a second.

Q. What direction did the Bear take?

A. To our bow, then he turn hard over on the port side.

Q. Then what happened?

A. Then he hit us about midway his ship and our bow stem.

Q. What happened after that?

A. After that Jack holler at them, "What is the matter? What are you doing? Are you crazy, or what?" And he back up, and then he come alongside, and then we tied the lines up and take him in Fish Harbor.

Q. When Jack said that to him, did he reply?

A. He didn't say nothing.

Q. Was the engine on the Marsha Ann going?

A. No, engine wasn't going at all then. The engine wasn't going at all.

Q. Do you know how fast the Bear was coming when you first sighted her?

A. I couldn't tell you exactly how fast he was

(Testimony of Steve Kuljis.)

coming. He come right on top of us when I see him, right at once, so I don't know how fast he was going. [480]

Q. What did he say to the skipper on the Bear?

A. I hollered at him to back up when I saw the boat right away, you see.

Q. Do you know whether he attempted to do that, or not?

A. Well, he turn hard over on the port side then.

Q. Could you see him do that?

A. Yes, I did see him turn over on the port side, and then he back up after they got hit, then he come alongside of us.

Q. Was anybody else on the bow with you?

A. Not at the time. I was alone on the bow.

Mr. Callaway: That is all.

Cross-Examination

By Mr. Shallenberger:

Q. Mr. Kuljis, how much time was there between the time you first saw the Bear and the collision?

A. That was right now, it was only a little ways from us, so right now, you see.

Q. Probably less than a second?

A. Yes, just a few seconds.

Q. Was it a few seconds——

A. Yes.

Q. ——or just like that?

A. A second or two, just at once. [481]

(Testimony of Steve Kuljis.)

Q. Mr. Kuljis, you said you heard the exhaust of the Bear's engine. A. Yes.

Q. Did you hear it pretty loud?

A. I heard the exhaust going, yes.

Q. It made a pretty loud noise?

A. I heard the exhaust, and then I said to our skipper, "This boat isn't very far away, because I hear his exhaust."

Q. Did it make a loud noise, could you hear it real plain? A. It make noise, yes.

Q. How far did the Bear travel before he turned to the port?

A. When I saw him that was right now, right then, it was a little ways from us, maybe 25 feet.

Q. Did he travel 10 feet before he turned left?

A. Well, maybe something like 10, 15 feet.

Q. Ten, 15 feet, and then he turned left?

A. Turned left, yes.

Q. And you know he turned left because you saw him turn the wheel?

A. Turn the wheel, yes.

Mr. Shallenberger: That is all.

Mr. Callaway: That is all.

The Court: Just a minute. [482]

You say the Marsha Ann was standing still?

The Witness: Yes, sir.

The Court: When you are out on a boat in the water, in the bow of the boat, and you can't see and or you can't see trees or mountains, how can you tell if the boat is moving through the water?

The Witness: I see the sea. I see sea when the

(Testimony of Steve Kuljis.)

boat go through the sea whether it is traveling or not.

The Court: What do you mean you see the sea?

The Witness: Yes.

The Court: What could you see to take a bearing to tell you whether the Bear was traveling or not?

The Witness: I see the boat cut on sea, then I see whether it is traveling.

The Court: You mean making a wake in front?

The Witness: Yes.

The Court: Cutting the sea?

The Witness: Yes.

The Court: It wasn't cutting the sea?

The Witness: No, not at all.

The Court: Standing perfectly *will*?

The Witness: Yes.

The Court: What signal is a boat supposed to sound when it is standing still? There is a different kind of signal when it is standing still?

The Witness: I don't know. I know our skipper was blowing the whistle. I don't know exactly. I couldn't tell [483] you exactly.

The Court: When the boats came together what kind of jolt did it make?

The Witness: It hit.

The Court: Pretty hard?

The Witness: No, not very hard.

The Court: Just easy?

The Witness: Yes.

(Testimony of Steve Kuljis.)

The Court: Were you still in the bow when they came together?

The Witness: Yes, I was on the bow.

The Court: You stayed right there?

The Witness: Yes. I moved a little ways. When the boats come together, hit, I just moved two, three feet.

The Court: What position was the Bear in after the boats came together?

The Witness: He midship and our stem.

The Court: Was the Bear level or tipped to one side, or what?

The Witness: That I could see, he was level. I couldn't see the list on him at all.

The Court: That is all.

Mr. Callaway: I have nothing further.

Mr. Shallenberger: Nothing further.

The Court: Step down. [484]

Mr. Callaway: The witness Zitko who has been here every day is sick today and couldn't come.

May I have a stipulation that there was a seaman named Vincent Beato who was washing down the main deck at the time his attention was called to the incident by the voices of the men, he was not looking in the direction just before the impact, and who would testify, if called, that the Marsha Ann's engines were off and had been for several minutes; that Frank Zankich was down in the hold cleaning the hold and knows nothing of the accident, except that if he was called he would testify that the propeller shaft was in his view and it was not turn-

ing and had not been turning for some little time; that Frank Flando was in the sleeping quarters and knows nothing until he heard some voices outside, but the boat was stopped and had been stopped for several minutes; that Andy Zankich was changing clothes and in his quarters and knows nothing of what happened until after the accident, but that the boat, the Marsha Ann, was stopped, that is, the engines were not running; and that Johnny Morinovich—he has already testified.

Mr. Shallenberger: I don't recall anybody by that name.

Mr. Callaway: Just a minute.

That Johnny Morinovich and Vince Flando were behind the pilothouse helping clean up the deck, and that they saw [485] nothing until their attention was attracted by voices right immediately preceding the collision, and that the Marsha Ann was stopped and had been for some few minutes.

The Court: The boat was stopped or the engines were stopped?

Mr. Callaway: The engines were stopped.

Mr. Shallenberger: If the Court please, as far as the clients that I represent, I can't stipulate to that testimony. Some of it is cumulative, but some of it certainly is not cumulative, except in its effect. I am sorry, but I don't believe in fairness to my clients that I can stipulate to that.

Mr. Callaway: I am not asking you to stipulate to any more than if they were so called they would so testify.

Mr. Shallenberger: I realize that. I can't stipulate.

Mr. Callaway: It is all right, then——

Mr. Shallenberger: I don't know whether I speak for my cohorts or not.

Mr. Callaway: ——I can bring them here.

The Court: Let's read this over again. First of all, let's read this proposal.

Mr. Shallenberger: May I ask this, before the reporter starts? Are these witnesses present?

Mr. Callaway: No. I told them specifically not to come, after my discussion with you fellows Thursday. [486]

Mr. Shallenberger: What discussion?

Mr. Callaway: I announced it before the Court that I was going to bring Zitko and the bowman, that the rest I would ask you for a stipulation as to what their testimony would be.

Mr. Shallenberger: I don't recall that.

Mr. Callaway: That took place in the presence of the Court.

The Court: I don't know what you talked of among yourselves, but I asked where the various men were, and you said Kuljis was in the bow and Zitko was up on the bridge, and they were the only two eye-witnesses, the rest of them were not eye-witnesses. Something was said, but I don't know what you agreed upon about a stipulation.

Mr. Shallenberger: The only thing that I recall was that Mr. Callaway said that we might be able to reach some stipulation as to the balance of the testimony, possibly, after one of them testified.

The Court: Let's hear what he proposes here. Read it, Mr. Reporter.

(Record being read by reporter.)

The Court: Where you say the boat was stopped, you mean the engines were stopped?

Mr. Callaway: That is right.

(The balance of the statement was read by the reporter.) [487]

The Court: Can't we stipulate that these witnesses if they were called they would so testify?

Before you make up your mind, not a single one of these men were eye-witnesses to the collision, and the gist of what they would testify to, when you boil it all down, is that the engines were not running.

Mr. Shallenberger: The only one I couldn't stipulate to—I can't help but say I wish counsel had made clear what he wanted the last day of court, but, anyway, I will stipulate to all of them except the man in the fish hold who said he saw the propeller shaft and it wasn't turning. I can't stipulate to something like that.

The Court: Let's ask this: Supposing the Marsha Ann had its engine cut off but was still traveling through the water, the propeller shaft would not be turning, would it, it would only turn when the engine turned, is that right?

Mr. Callaway: That is correct.

Mr. Shallenberger: That is probably true, your Honor, but it is a question of when did it stop.

That kind of testimony has a direct bearing in

this case with the main contention of the respondents.

Mr. Callaway: All right. I will bring him here. O.K.

Mr. Shallenberger: I can stipulate to the rest of it, but I can't stipulate to that.

Mr. Callaway: You gentlemen all know that up through [488] Thursday I had these men here, you saw them.

The Court: I don't want to club counsel into a stipulation, but it doesn't seem to me that this testimony is any turning point in this case. Any time you stipulate that a witness would so testify, the man whose witness is not personally called has the disadvantage of the Court seeing nobody, just saying somebody would so testify, and you have the disadvantage of not being able to cross-examine him.

Mr. Shallenberger: Right.

The Court: As I see it, the only thing these witnesses would offer that is material at all is that the engines of the Marsha Ann were not running.

Counsel's statement was a little broader than that, he said the boat was stopped; but he modifies that by saying that the engines were stopped.

Mr. Shallenberger: May I suggest this? May I have two minutes with Mr. Fall and Mr. Roethke, and perhaps we can stipulate?

The Court: Sure.

(Slight delay in proceedings.)

Mr. Shallenberger: If the Court please, I have

discussed the matter with Mr. Roethke and Mr. Fall. They are willing to stipulate that prior to the collision these men would testify that the vessel's engine was not running. However, they and myself are unwilling to stipulate to the [489] witness testifying that for a considerable period of time, I believe it was minutes, prior to the collision, that the shaft was not turning.

The Court: Well, the stipulation only said some little time, whatever that means.

I would think you fellows would have jumped at that stipulation. The witness may get on the witness stand and he may testify that it hadn't been running for 10 minutes. "Some little time" doesn't mean,—

Mr. Callaway: No, your Honor. I specified. For instance, this witness Zankich who was in the hold said in cleaning up—this is what I will produce him here to testify to, that they had just unloaded this fish and the hold was dirty from having the fish in it, and that he had taken up whatever covers the propeller to wash it, and that for at least five minutes the propeller—Your Honor, I have been in bed ever since this trial adjourned on Thursday, but it doesn't make any difference, I will bring every one of these witnesses here, and I will be glad to do it, I haven't anything to do but try this lawsuit. They were here and were in attendance every day. I thought that I was giving the opposition all the advantage. I have talked to every one of them personally.

Mr. Roethke: You talked to your witnesses or to me?

Mr. Callaway: Talked to all the witnesses personally. [490]

Mr. Fall: He didn't talk to me about it.

Mr. Callaway: There are certain other details they could add.

The Court: What he has just now stated is not part of the stipulation that he asks.

Mr. Callaway: Let's read it back.

The Court: What you just said or what you said before?

Mr. Callaway: What I said before.

The Court: All right.

(The portion of the record referred to was read by the reporter as follows:)

"The witness Zitko who has been here every day is sick today and couldn't come.

"May I have a stipulation that there was a seaman named Vincent Beato who was washing down the main deck at the time his attention was called to the incident by the voices of the men, he was not looking in the direction just before the impact, and who would testify, if called, that the Marsha Ann's engines were off and had been for several minutes; that Frank Zankich was down in the hold cleaning the hold and knows nothing of the accident, except that if he was called he would testify that the propeller shaft was in his view and it was not turning and had not been turning for some

little time; that Frank Flando was in the [491] sleeping quarters and knows nothing until he heard some voices outside, but the boat was stopped and had been stopped for several minutes; that Andy Zankich was changing clothes and in his quarters and knows nothing of what happened until after the accident, but that the boat, the Marsha Ann, was stopped, that is, the engines were not running; and that Johnny Morinovich—he has already testified.

“Mr. Shallenberger: I don’t recall anybody by that name.

“Mr. Callaway: Just a minute.

“That Johnny Morinovich and Vince Flando were behind the pilothouse helping clean up the deck, and that they saw nothing until their attention was attracted by voices right immediately preceding the collision, and that the Marsha Ann was stopped and had been for some few minutes.

“The Court: The boat was stopped or the engines were stopped?

“Mr. Callaway: The engines were stopped.”

The Court: You had better accept quick.

Mr. Callaway: I have it down here in my notes, when I talked to him, that he puts it, and I put it down that way, he said five or six minutes.

The Court: Are you still willing to stipulate as the [492] reporter read it?

Mr. Callaway: Yes, I will take the stipulation, as it stands, if counsel want to, but I am not going to urge it, that is for sure.

Mr. Roethke: For the record, I dislike being put in the position of creating the impression that we are being dogs in the manger. We are trying a lawsuit, and, sure, we have all had our witnesses here, but we are in the same difficulty, Mr. Callaway, on this other nebulous stipulation. These are facts which go to the essence of the lawsuit.

Mr. Callaway: Then let's forget it.

Mr. Roethke: All right, Mr. Callaway, if that is your attitude, then let's forget it, if you interrupt and don't let us finish our statements.

The Court: Let's not blow up here. I personally don't think it makes a lot of difference, that is one reason why I suggest that you take the stipulation. I don't think whether——

Mr. Roethke: We will accept it.

The Court: It still doesn't answer the question, was the Marsha Ann making headway in the water?

The engines could have been off and the Marsha Ann could have been going full tilt.

Mr. Roethke: That is correct.

The Court: The engines could have been on and she could have gone in reverse. [493]

Mr. Shallenberger: We will accept.

Mr. Fall: I have no objection. I don't think it means one thing, one way or the other, as far as my clients are concerned.

Mr. Shallenberger: We will stipulate to it.

The Court: All right. So stipulated, then.

Mr. Callaway: Mr. Bozanich.

ANTHONY BOZANICH

called as a witness by and on behalf of respondents, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Anthony Bozanich.

Direct Examination

By Mr. Callaway:

Q. What is your business or occupation?

A. I am fleet manager for Pan-Pacific Fisheries of 350 Sardine Street, Terminal Island, California.

Q. Mr. Bozanich, were you so occupied during the sardine season of 1948-49?

A. During the sardine season of 1948 and '49, due to the illness of my brother I temporarily took a leave of absence from my fleet manager's job and went to run the fishing boat Sunset.

Q. How long have you been operating fishing boats in [494] San Pedro waters, Los Angeles Harbor waters?

A. I have been master of my own vessel since 1936; about 13 years.

Q. Do you know whether or not after December 1, 1948, the California Seafood Cannery was taking any sardines?

Mr. Shallenberger: Just a moment. I object to that, your Honor. There is no proper foundation. It is pure hearsay as far as this witness is concerned. This is not the company he says he was employed by.

Mr. Callaway: I will have him explain his answer if you want the basis of his knowledge.

(Testimony of Anthony Bozanich.)

Mr. Shallenberger: No. I am objecting to the question at this time.

The Court: I am going to sustain the objection. It is indefinite and uncertain. He might answer they weren't taking any seafood, and yet the facts might be that they had already agreed to take enough so they weren't taking any more.

Mr. Callaway: I see what the Court means.

Q. (By Mr. Callaway): From December 1st on throughout the remainder of the season, what was the situation with relation to the California Seafoods fleet?

Mr. Fall: If the Court please, again it is incompetent and irrelevant, it is hearsay, there is no proper foundation shown that this man has any connection with or had any [495] knowledge of the operations of the California Seafood Corporation.

Mr. Callaway: Just a minute. I am sorry. I will lay plenty of foundation.

Q. (By Mr. Callaway): Are you familiar with the boats that were fishing for the California Seafoods during that sardine season?

A. I personally knew the skippers of two or three of the vessels that work for that company.

Mr. Fall: If the Court please, "Are you familiar," he has placed himself in the position of testifying from hearsay only.

The Court: We don't know. So far he has just said he knew some skippers.

Mr. Fall: The objection is premature. I think it is.

(Testimony of Anthony Bozanich.)

Q. (By Mr. Callaway): Were those boats fishing during that time for sardines?

Mr. Fall: To which I object, as he has testified that he knows only from hearsay, what other skippers and captains told him.

The Court: We don't know. He said, "Were those boats fishing?" He might know and he might not know.

Do you know, were they fishing?

The Witness: They weren't part of that time.

Mr. Roethke: What boats? [496]

The Witness: The New Washington, the Vashan.

The Court: Who do they belong to?

The Witness: The Vashan belonged to Carl Morinkovich, the New Washington was chartered by Dominic Hubitich.

The Court: Who did they fish for?

The Witness: California Seafood Company, Long Beach.

Q. (By Mr. Callaway): Were they tied up?

A. They were tied up due to the fact that the canneries didn't want any sardines.

Mr. Fall: Just a minute. We ask that the last part of that be stricken on the ground it is a conclusion of this witness. There was no proper foundation that has been laid to permit him to testify.

The Court: The last part may go out; the part that they were tied up may remain in.

Q. (By Mr. Callaway): Do you know what they were canning down at California Seafoods?

(Testimony of Anthony Bozanich.)

Mr. Fall: Again, if the Court please, there is no proper foundation——

The Court: Make your objection.

Mr. Fall: There is no proper foundation to show that this man has any knowledge as to what they were canning at the California Seafoods Company.

The Court: Objection overruled. If you know.

The Witness: They were canning jack mackerel and blue [497] mackerel, and the sardines they were canning were obtained from boats out of port that were not customarily members of the fishing fleet that works out of San Pedro.

Q. (By Mr. Callaway): Do you mean boats from Monterey or the like of that?

A. Monterey and San Francisco.

Q. What was the situation with relation to the fishing fleet of the Pacific Coast during that particular season?

A. During that particular——

Mr. Fall: May I have that question, please?

(The question was read by the reporter.)

Mr. Fall: If the Court please, I think the question is very indefinite.

The Court: Objection sustained on that ground.

Q. (By Mr. Callaway): How many boats were fishing for sardines out of San Pedro during that season?

A. I would say in the neighborhood of 250 boats.

Q. From where?

A. From up and down the whole coast including

(Testimony of Anthony Bozanich.)

the ports of Monterey, San Francisco, Tacoma, Seattle, Everett.

Q. What kind of sardine season did they have?

Mr. Shallenberger: I object to that question, your Honor, as indefinite, immaterial.

Q. (By Mr. Callaway): I will approach it this way, then: How did that season compare in the number of [498] sardines caught with subsequent and prior years?

Mr. Shallenberger: If the Court please, I object to that as not relevant to the issues of this case. In the way it is framed, anyway.

Mr. Callaway: It is preliminary.

The Court: I thought you gentlemen agreed that you weren't going to have to go into the question of the problem of proof of the probable catch; that that would be referred if we got that far in the case. Wasn't that the stipulation?

Mr. Fall: That was the stipulation.

The Court: That is what this evidence is offered for, is it not?

Mr. Callaway: Not primarily.

The Court: What is it offered for, what purpose?

Mr. Callaway: I intend to prove by this witness among other things, that this is not even a sardine fishing boat. It is a salmon boat.

The Court: Why don't you ask him about the boat, then, and get right down to it?

Mr. Fall: We are wasting a lot of time.

Q. (By Mr. Callaway): Are you familiar with

(Testimony of Anthony Bozanich.)

the Bear? A. Yes, I have seen the vessel.

The Court: Have you been on it?

The Witness: No, I have not been on the vessel.

The Court: Where have you seen it? [499]

The Witness: I have seen it tied up in the port of San Pedro, berth 73.

The Court: How many times have you seen it?

The Witness: I have seen it during the past '48-'49 sardine season, I saw it half a dozen times.

The Court: Do you know how long it is?

The Witness: I believe it is in the neighborhood of, I would say, 64, 65 feet.

The Court: How many tons?

The Witness: She should take about 40 tons of sardines in the hatch.

The Court: What is the tonnage of the boat itself?

The Witness: I wouldn't be familiar with the registered tonnage, but I did have a sister ship that was built on the exact model of that boat Bear.

The Court: Built at the same yard?

The Witness: It was built by Babar Brothers in 1920, and I believe the model was the same. The name of this boat was the Mercury.

The Court: Go ahead.

Q. (By Mr. Callaway): What type of fishing was she built for?

A. She is built for salmon fishing in the Puget Sound and Alaska.

Q. Will you state what disadvantages she had

(Testimony of Anthony Bozanich.)

as compared [500] to other purse-seiners that were competing with her during that season?

A. Well, I noticed, the first thing about it, all the salmon boats, none of them have a crow's nest or lookout on top of the mast.

Q. What is the importance of that?

A. The importance of that is on a dark night when we are scouting around for fish, the boats that work out of San Pedro with the use of the lookout in the crow's-nest are able to spot the fish at a further distance much sooner than an observer would be able to do the same from the bridge of a vessel similar to the Bear.

Q. What other disadvantages does she have?

A. The other disadvantages, she is a smaller type boat with a smaller capacity for carrying fish. She cannot use as long or as deep nets, as big a net as we generally carry aboard our vessels. She is equipped with rope purse lines, whereas the majority of the fleet in our harbor have wire rope or cable purse lines, which enables us to set our net in four or five fathoms of water, providing the bottom is clean, whereas a purse-seine with rope for purse line has to set in at least 14 or 15 fathoms of water.

Q. In other words, if you spot fish in shallower water the Bear wouldn't be able to make a set for them, whereas these other boats would, is that it? [501]

A. He would be able to make a set, but they would get tangled up in pursing up his net, whereas a boat with a wire purse line, the net would become

(Testimony of Anthony Bozanich.)

clear and he would be able to lift it up without any damage and catch the fish at the same time.

Mr. Shallenberger: If the court please, this all goes to the element of damage.

The Court: That all goes to the element of damage.

Mr. Callaway: I can't bring this out on a reference, if one is necessary.

The Court: Why not? It may be a little more informal, but the purpose will be to take testimony.

Mr. Shallenberger: Yes, to go into every fact to determine that thing.

Q. (By Mr. Callaway): By the way, do you know what condition the Bear was in? What did you observe about her condition?

Mr. Fall: As to what time?

Q. (By Mr. Callaway): Right before this accident, in November, 1948.

Mr. Fall: Did he see her just before the accident in 1948? When did he last see her?

Mr. Callaway: He said he did.

The Witness: I saw the boat a half dozen times during the October dark of 1948. [502]

Mr. Callaway: You claim she was in the shipyards all the rest of the time.

The Court: Describe her condition as you saw it.

Q. (By Mr. Callaway): As you could observe it.

A. What I observed about the vessel was the lack of a crow's-nest, and she wasn't equipped such as the vessels that we have in this harbor, due to

(Testimony of Anthony Bozanich.)

the lack of cable purse lines, and the net was not quite as big, in my estimation, as the nets that we carry here in this harbor.

Q. Did you observe anything about her physical characteristics other than that?

A. She is an older type vessel, and the equipment aboard her wasn't probably, as kept up as we have on the newer type vessels in the harbor.

The Court: Did you see that?

The Witness: I did notice that, yes.

The Court: What equipment did you notice?

The Witness: Like the winches, for example, they have small niggerheads for pursing, whereas we have larger niggerheads for pursing here, where we purse our nets much faster, and with less wear and tear on our gear than the boats do on the salmon fishing. In salmon fishing they use a lighter gear than what we have in our sardine net.

Q. (By Mr. Callaway): Did you pay any attention to the fact of whether or not the boat was hogged, or not? [503]

A. To tell you the truth I wasn't aboard the vessel myself and I saw her from the wharf. I didn't go aboard the vessel.

Q. Mr. Bozanich, taking these two boat models here, in your experience as a navigator if a boat traveling at any speed through the water, for example, two and a half knots, turns sharply, will she go sideways any distance?

A. Yes, she would for a little distance, she would

(Testimony of Anthony Bozanich.)

go sideways in the water and her stern would have a tendency to swing in that direction (indicating).

Mr. Callaway: That is all.

The Court: Mr. Bozanich, supposing a boat was traveling two and a half knots per hour, and it was suddenly turned sharp to port, as much as it could be turned, how many seconds would it take before the stern of the boat began to respond to the helm?

The Witness: It depends a lot on your steering conditions.

The Court: You said you knew the Bear. Let's take the Bear.

The Witness: I would say in about three or four seconds.

The Court: That it would begin to respond?

The Witness: Yes.

The Court: After it began to respond, with what speed would the stern swing around? [504]

The Witness: As the wheel turned, the steering wheel, it would increase the speed at which the stern would swing around. In other words, until you put her to hard over it would take three or four seconds or five, until you have it hard over. When she is completely hard over she would swing a lot more than when she is just part of the way.

The Court: Do I understand it would take four or five seconds for it to respond at all, and then take four or five seconds more until it was hard over?

The Witness: Yes, I believe it would.

The Court: It would take——

(Testimony of Anthony Bozanich.)

The Witness: It would take seven or eight seconds until she was hard over and responded.

The Court: That is all.

Mr. Shallenberger: If the court please, I have no questions other than as pertaining to damages, and in view of our stipulation I don't know why I should take the time of the court to cross-examine this witness on that.

The Court: I don't either. You had a stipulation on that.

Mr. Shallenberger: I have no questions, then.

The Court: Step down.

(Witness excused.) [505]

ARTHUR DeFEVER

called as a witness by and on behalf of the respondents, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Callaway:

Q. Give us your full name.

The Witness: Arthur DeFever.

Q. What is your business or occupation?

A. Naval architect and marine surveyor.

Q. How long have you been so engaged?

A. Engaged with Hudson, Green, Haldeman as naval architect from '42 to '47 and associated with Capt. Wilvers from 1947 until the present day.

(Testimony of Arthur DeFever.)

Q. Did you have occasion to attend aboard the Bear on the 30th of November, 1948?

A. I believe it was the 31st of November; if I can refer to my notes I can tell.

Q. It wouldn't be the 31st, it would either be the 30th or the 1st of the next month.

A. It must have been the 30th.

Q. Where was she at that time?

A. On the dry dock, Harbor Boat Building Company.

Q. Did you thereafter continue to observe the Bear? A. That's right.

Q. What did you observe about her? [506]

A. I noticed that she had damage on the starboard side amidships to the extent of bending and twisting——

Mr. Shallenberger: Pardon me. May I inquire what Mr. DeFever is reading from?

Mr. Callaway: Tell him what it is.

The Witness: These are my original notes that I had made up at the time I attended aboard.

Mr. Shallenberger: May I inquire, Mr. DeFever, if you are using those to refresh your memory, or if it is necessary for you to read those?

The Witness: Well, to refresh my memory, principally. It has been a year since the accident occurred.

Mr. Shallenberger: In other words, upon looking at those your memory comes back of what you actually saw at the time you were there?

(Testimony of Arthur DeFever.)

The Witness: That is right. I probably don't need them. If you would rather I not use them——

The Court: Are they all notes made at that time?

The Witness: Yes, these notes were made up at that time.

The Court: Including the sketches?

The Witness: Well, this was during the course of repairs, and upon the completion there.

Mr. Shallenberger: These notes that you are referring to, Mr. DeFever, those were all notes made by you? [507]

The Witness: Yes.

Mr. Shallenberger: Not by Mr. Williams or someone else?

The Witness: These notes I am referring to were made by myself.

Mr. Shallenberger: If you refer to any other notes made by someone else, will you please tell me if you do?

The Witness: That's right.

Q. (By Mr. Callaway): What did you observe?

A. She had damage on the starboard side just aft adjacent to the rigging. The planks in that area immediately below the guard were damaged, and two planks on the port side were loosened at the seams. The knees in the hold showed signs of movement, and from the extent of the damage in that area I assumed that some of the frames might be broken, but not being open sufficiently I couldn't definitely determine that on that day. The rail cap

(Testimony of Arthur DeFever.)

was broken in that area. The waterway plank or covering board, it is called, was crushed, and some of the deck seams in that immediate area were loosened.

Q. Did you continue to observe her?

A. After that date, yes.

Q. Would you tell us if the boat was at a later time opened up? A. Yes, it was.

Q. What did you observe then? [508]

A. We noticed in the area of the collision some of the frames were stove in, and also as the vessel was opened on the port side the frames were in bad condition.

Q. Did you form a conclusion as to whether or not the frames on the port side that you have mentioned were damaged as a result of the collision in question? A. They were definitely not.

Q. And what do you base that on?

A. Well, the cracks were very evident that they were of long standing or been broken for quite some time. It was proven by the fact that there was foreign matter in the cracks and well adhered to the broken surfaces.

Q. Did you follow the vessel while she was being repaired?

A. I did a good part of the time.

Q. Will you tell us from your examination what repairs were made necessary by reason of this collision?

A. I would say the necessary repairs would have been to replace approximately 6 to 8 frames on the

(Testimony of Arthur DeFever.)

starboard side in the way of the collision, the broken planks in that immediate area, which would average 14, 16 or 18 feet in length; to repair the rail, replace——

The Court: The guard rail, do you mean?

The Witness: The guard rail and the bulwark rail. And also replace a section of the covering board, recalk the deck [509] in this immediate area, recalk the loosened planks on the port side, repair slight damages to the rigging, check and re-align the alignment of the engine shafting. Then there is the matter of cleaning up the hold when the vessel first went on dry dock, due to the remaining fish and scale and foreign matter left in the hold which needed to be cleaned up for working conditions, and then paint the vessel in the damaged areas.

Q. What actually was done in addition to what you have mentioned?

A. Well, there was considerable refastening of all the planks, recalking, removing some of the sheathing on the outside of the planking in the stern, work on the seine table, stiffening of the engine beds, painting the superstructure and topsides of the vessel.

That covers it pretty well.

Mr. Shallenberger: May I have the answer read?

(The answer was read by the reporter.)

The Witness: Also, there was fore and aft garboards removed and replaced.

Q. (By Mr. Callaway): What are garboards?

(Testimony of Arthur DeFever.)

A. They are the first plank adjacent to the keel.

Q. In addition to the work that you first mentioned, this additional work, it is your judgment that that was not occasioned by the accident? [510]

A. That is my judgment, yes.

Q. How much did you determine that it would cost to do the amount of work that you found to be due to the collision?

A. In my opinion about \$5900.

Q. By the way, what condition did you find the boat in after she was opened up?

A. Very bad condition.

Q. In what particulars?

A. Pretty well rotten all the way through. The fastenings were well eaten away, very little value to many of them left, as far as strength is concerned. That was the general condition throughout.

Q. What about the boat being hogged?

A. Yes, there is a hog evident on the afterdeck.

The Court: Being hogged?

Mr. Callaway: Yes. I will have him explain it.

The Witness: The decking is in very poor condition, being composed of many short sections, the walking seams are fairly well chewed up, showing recalking many times.

Q. (By Mr. Callaway): What does hog mean?

A. The hogging of a vessel is when the bow and stern, you might say, sag away from the midships and shows tension on the deck, and reverse to her sheer, it lessens the sheer of the vessel and in many cases shows a hump in the deck. [511]

(Testimony of Arthur DeFever.)

Q. Do you have an opinion as to where the accident had anything to do with that?

A. No, I would say not.

Q. A vessel in that condition, would you consider her seaworthy? A. No.

Q. Why not?

A. In my opinion after the vessel was opened up and viewing her decks, heavy weather could cause the boat to work tremendously, break off some of the small fragments of the fastenings remaining and she would take on water in heavy seas.

Q. Is it your opinion that this additional work that was done on the boat in connection with her fastenings and those other things you mentioned should have been performed whether this accident happened or not?

A. Yes, they definitely should have been.

Q. Was this boat, while it was in the Harbor Boat Works, worked on constantly during every working day, or was it sporadic, or what was the situation?

A. Well, I wouldn't say to the full extent—the amount of men or crew on the boat fluctuated quite a bit, and I wouldn't say that it was really worked on constantly and really pressed the best effort to get her out in a reasonable length of time. [512]

Q. What is your opinion as to the reasonable length of time it should have taken to make the repairs that you found due to the collision?

A. I would say 20 to 25 calendar days.

Q. How often were you there, Mr. DeFever?

(Testimony of Arthur DeFever.)

A. I couldn't give a definite report on that. I was there very constant at the beginning of the job, and then turned it over to one of our employees, Mr. Williams, to keep closer contact with it as I had another job in the yard and I wanted to make sure the job was followed through properly. But when my time was available, I would drop by and make an inspection on it. When problems did arise Williams would call our attention to it.

Mr. Callaway: You may cross-examine.

Mr. Shallenberger: If the court please, at this time I wonder if I might go call my office to find out if we have settled the case that comes before your Honor tomorrow. San Francisco was to wire me this afternoon. I called just before court convened and no wire had come in. I would like to call now before my office force goes home. If a wire has come, then we need not clutter up your Honor's calendar.

The Court: Yes, you may go out.

(A slight delay in proceedings.)

Mr. Shallenberger: No luck, that is, no word.

Mr. Callaway: Now, gentlemen, let's get this straight. [513] May I have a stipulation that I may take this model vessel and substitute two photographs, one showing each side of the vessel?

Mr. Roethke: It is all right with me.

Mr. Shallenberger: That is O. K. with me.

Mr. Fall: I think that was the order of the court several days ago.

(Testimony of Arthur DeFever.)

The Court: He was to do it the other way around; he was to submit the photographs and then get the vessel. I didn't know how he intended to do it.

Now, you may have the vessel and you will thereafter substitute the photographs.

Mr. Callaway: Yes.

The Clerk: Shall I assign a number to them at this time?

The Court: Yes.

The Clerk: They will be Respondents' Exhibits—will they be photographs, two of them?

Mr. Callaway: Yes.

The Clerk: Exhibit O-1 and O-2.

(The Respondents' Exhibit numbers O-1 and O-2 were reserved for the two photographs.)

Mr. Shallenberger: Do I understand these documents are to be offered in evidence? I will offer them as [514] Libelants' and Interveners' next in order.

The Clerk: Libelants' Exhibits 14-A and 14-B.

Mr. Shallenberger: Do you have all those exhibits marked Libelants'?

The Clerk: Yes. I believe it was stipulated at the beginning of the trial that it was agreeable.

Mr. Shallenberger: May we have a stipulation now that they may run both to Libelants' and Interveners' case?

Mr. Callaway: So stipulated.

Mr. Roethke: So stipulated.

The Court: All right.

(Testimony of Arthur DeFever.)

Cross-Examination

By Mr. Shallenberger:

Q. Mr. DeFever, between the 30th of November and 17th of December, how often were you aboard the Bear?

A. I couldn't say exactly the number of times.

Q. Do you have anything in your notes that would help your memory?

A. Well, I don't know. No, not on the number of times. I wouldn't be able to say. I would say it was frequent.

Q. By "frequent" do you mean once a week or twice a week?

A. I would say I was there probably every day or twice a day for two or three days at a time, and then I might miss a day or two, depending on the amount of work done by the [515] yard. If they weren't working on it or didn't have many men, there was no use attending on board.

Q. Well, would you say you were there a dozen times during that 17 days?

A. I just couldn't say. I don't remember. It is too long ago.

Q. Would you say you were there 10 times?

A. I said I couldn't tell you.

Q. Were you there three times?

A. It was more than three times, I know that.

Q. December 17 is when Mr. Williams took over, is it not?

A. Yes.

Q. After Mr. Williams took over how many times would you say you were there?

(Testimony of Arthur DeFever.)

A. That couldn't be stated exactly. I wouldn't want to say.

Q. Once a month?

A. No; it was more frequent than that.

Q. Twice?

A. No; more frequent than that, because I had another job in the yard——

Q. 10 times a month?

Mr. Callaway: Let him finish.

A. (Continuing): I had another job in the yard and I [516] would pay a brief visit to the vessel or keep in touch with Mr. Wililams during that time.

Q. (By Mr. Shallenberger): Do you know when the vessel was finished?

A. From my notes here, why, the vessel was finished about February 17th.

Q. Between December 17th and February 17th were you there at brief intervals?

A. That's right.

Q. Now, then, that first 17 days when you made these visits, how long would you be there?

A. A sufficient time to observe the amount of work going on.

Q. How long was that?

A. Well, that would vary each day, also.

Q. From what to what, in length of time?

A. It could be three or four hours at a time, it could be just 10 or 15 minutes.

Q. How many times would you say you were there three or four hours at a time?

A. I wouldn't say they were too frequent.

(Testimony of Arthur DeFever.)

Q. Would you say half a dozen times?

A. Well, during those three or four times it wouldn't be exactly right on the vessel, it might be on another job right in the yard, and then back to it again. [517]

Q. Did you ever see Mr. Sims aboard the vessel?

A. Yes, I have.

Q. Did you usually see him when you were there?

A. Occasionally. In the yard, at least. I wouldn't say that I saw him on the vessel, but in the yard.

Q. Now, then, you stated after December 17th that you made brief visits to the vessel and——

A. The vessel was completed on or about—let me refer to my dates. You may go ahead.

Q. After December 17th, you say you made brief visits to the vessel and usually you would come to the vessel if Mr. Williams would ask you to come when some problem arose, is that correct?

A. Yes, or if he had some question in mind.

Q. What problems arose, Mr. DeFever?

A. No problems other than that he would want me to take a look at it, to discuss it with him as to frames, planking, calking, amount of damage caused.

Q. How many times did he request you to come and discuss these frames and calking and damage?

A. I don't recall. It wasn't very frequent, as far as him actually calling me.

Q. Then there weren't any problems except that you were—he was an employee of your firm and you would shoot a little breeze about it once in a while, is that right? [518]

(Testimony of Arthur DeFever.)

A. That is right.

Q. You never made any objection to the yard as to what they were doing, did you?

A. No, I don't recall making any objections to the yard. We had no power to supervise the construction. We were merely observing the amount of work done.

Q. In other words, you were asked to observe the work, and that is all?

A. We were representing the underwriters, and we had no power to authorize work to be done on somebody else's vessel. They had their own representative there.

Q. Did you ever make any suggestion to the yard that something wasn't necessary or that it was necessary?

A. I myself didn't, no.

Q. Did you ever tell your underwriters before the vessel was completed that there was being too much work done there?

A. I believe they were aware of it, yes.

Q. Did you tell them?

A. Our office advised them of it, I would say.

Q. How do you know that?

The Court: The question is did you tell them?

The Witness: I believe I could say yes on that, sometime during the time of construction, yes.

The Court: Who did you tell? [519]

The Witness: Mr. Platisha.

Q. (By Mr. Shallenberger): When did you tell him?

A. I couldn't say the exact date.

(Testimony of Arthur DeFever.)

Q. Approximately, with relation to the beginning of the work and the end of the work?

A. I couldn't say. That is too long ago.

Q. It could have been right at the end?

A. No, I wouldn't say so.

Q. The middle?

A. If you want me to guess at it——

Q. No. I don't want you to guess at it. Tell me if you know.

A. It would be reasonably after the vessel was opened up.

Q. What did you tell him?

A. That there was a considerable amount of work being done on the vessel, more than arising out of the collision.

Q. Did you tell him what work that consisted of?

A. That couldn't be stated at the time for the reason that it wasn't all done at one time. It was done right up to the completion of the vessel, and any work like that we were unconcerned about, anyway.

Q. In other words, Mr. Platisha just had you go over there because he likes you?

A. We were concerned about the damage in the immediate [520] area of the collision. What the owner wants to do, paint the superstructure or the mast, or lengthen the boat, we are not concerned. We are there to attend aboard to examine the immediate area of the accident, and no other work.

Q. And to examine on behalf of your clients anything that might be necessary to be repaired by reason of the accident, is that not right?

(Testimony of Arthur DeFever.)

A. Yes, caused by the accident.

Q. And if there is a lot of work going on that you deem is not caused by the accident, you observe that, too, don't you? A. In a casual way.

Q. So that you can come into court and testify in a law suit that it wasn't necessary, is that right?

A. To a certain extent, yes.

Q. Isn't that part of your job?

A. To a certain extent.

Q. Then you observed it in more than a casual way, the difference between these two sets of workings, did you not?

A. I wouldn't say on all of it, no.

Q. All right, Mr. DeFever. If you didn't observe it in a precise and detailed manner, and carefully, how did you know it wasn't caused by the collision?

A. Well, it was evident prior to that work being done, [521] the vessel was examined for the amount of damage done by the collision.

Q. How long did it take you to examine the vessel the first time you examined it, Mr. DeFever?

A. It would say periodically the better part of the first day she was hauled, I was there the second day after they had the hold cleaned out, and kept fairly close to it thereafter until they got the work well in hand.

Q. Had you ever seen the vessel prior to the time you saw her in the ways on the 30th of November?

A. No, I couldn't say that I had.

Q. You don't know what her condition was prior to that time?

(Testimony of Arthur DeFever.)

A. Not prior to being on the ways, no.

Q. You didn't see her at the Van Camp dock when she first came in?

A. No, I didn't.

Q. She was on the ways when you first saw her?

A. That's right.

Q. Now, Mr. DeFever, you say she was hogged. Isn't it true, Mr. DeFever, that a new vessel just completed being constructed and off the ways can be hogged?

A. She can be hogged, but she is designed to a certain extent to take that amount of hog immediately after launching.

Q. And aren't there, also, many vessels that ply the [522] seas for years and years and years that have a decided hog? A. There is.

Q. And they pass insurance surveys, don't they?

A. I would say some of them do.

Q. Now, then, in stating what the repairs were that you believed necessary to be done from the collision, you stated that there were 6 to 8 frames on the starboard side that were stove in. I assume you mean broken? A. Yes.

Q. And that there were broken planks on the starboard side, and in arriving at the number of those how did you arrive at that?

A. By the concave in the hull in that immediate area of the collision.

Q. How did you arrive at how many there were?

A. Just by that, the concave. The hull has fairness to it, and you can see the damage in that immediate area when she is stove in.

(Testimony of Arthur DeFever.)

Q. But you say 6 to 8 frames, I mean that is your recollection of it as you saw it last November 30th, 1948, is that right?

A. And a few days thereafter, yes.

Q. You didn't get it from your notes?

A. That is right.

Q. It is just your recollection? [523]

A. That's right.

Q. In fact, most of what you are testifying to today is a matter of your recollection, isn't it; it is not in your notes?

A. I would say it is a fact——

Q. I mean it is mostly recollection, isn't it?

A. ——what I stated here occurred or is the truth.

Q. You didn't answer me, Mr. DeFever. It is not in your notes, it is in your mind?

A. That's right.

Q. Mr. DeFever, as to what is necessary to repair a vessel that has been damaged in a collision of this sort, many things are a matter of opinion, are they not, Mr. DeFever? A. That's right.

Q. And while your opinion might be that certain things should not be repaired, another competent marine surveyor, a man of the same calibre as yourself, might have a different opinion, is that not right.

A. That could be.

Q. So if a competent marine surveyor said, "I believe that this planking should be removed and refastened, because I think it was loosened sufficiently by the collision to do so," and you said, "No,

(Testimony of Arthur DeFever.)

I don't believe so, I believe that was loose before," you wouldn't say that either one of you [524] were right or wrong absolutely, would you?

A. Well, it is a personal opinion, a matter of opinion.

Q. Mr. DeFever, you are very familiar with the Harbor Boat Building Company, aren't you?

A. Yes, I am.

Q. In and out of their yards a great deal of the time? A. Yes.

Q. You have jobs in there frequently?

A. Well, at times. It is spotty.

Q. Would you say that the Harbor Boat Building Company does good work?

A. As far as their work is concerned, I would say it was good work as an average.

Q. Would you say that they are efficient in their work?

A. Well, I decline to answer that.

Q. Would you say that they are not efficient?

A. Well, I would say that would vary, too.

Q. How would that vary?

A. Well, some jobs they may be, and others they may not be. Through the number of jobs we have had there, we have seen it exist.

Q. Would you say that condition exists in their boat yard any more than it does in any other boat yard in the harbor area the size of the Harbor Boat Building Company? [525]

A. I would say it does.

Q. What? A. Exists.

(Testimony of Arthur DeFever.)

Q. More in the Harbor Boat Building Company?

A. Yes, I think I would have to say that.

Q. In other words, if a person just had their boat wrecked and chose a yard at random, you think they would do better to choose some other yard than Harbor Boat?

A. That is up to the individual.

Q. No. I am asking you the question.

A. At times. It depends on the situation. As I say, we have had jobs in there that have been all right; others haven't been too satisfactory.

The Court: You send work to the Harbor Boat Company?

The Witness: To be very frank with you, we haven't recently.

The Court: You have in the past?

The Witness: I don't think that I could say I have sent a job there.

Q. (By Mr. Shallenberger): How about your organization? A. In the past they have.

The Court: How recently?

The Witness: I don't think there has been one gone there directly from our office for the last nine months or a year or so, and even then I don't know about that. [526]

The Court: Not since they finished rebuilding the Bear, is that it?

The Witness: I know we haven't sent one, so it is more than a year.

Q. (By Mr. Shallenberger): Now, then, Mr. DeFever, I believe you stated that you had another job in there at the time. What was that?

(Testimony of Arthur DeFever.)

A. That was for the Department of the Interior,
U. S. Wild Life Service.

Q. They picked the boat yard, and not you?

A. That job went out on bid.

Mr. Shallenberger: That is all.

Redirect Examination

By Mr. Callaway:

Q. The situation is about like this, Mr. DeFever, if they have a job in there and there is a penalty that they get it done and done right, they do it, otherwise you take your chances?

A. That is the general experience we have had.

Mr. Callaway: That is all.

The Court: Just a question or two.

You gave an opinion as to these necessary repairs, did you not?

The Witness: That's right.

The Court: What would be the necessary cost of taking [527] off the planking on the starboard side? Just that item alone.

The Witness: The amount of planking arising out of the accident, is that what you are referring to?

The Court: Yes.

The Witness: We term "planking" removing and replacing, in the vicinity of 5½ a lineal foot.

The Court: 5½ dollars?

The Witness: Yes.

The Court: What would be the cost for replacing the frames on the starboard side per frame?

(Testimony of Arthur DeFever.)

The Witness: They would run in the vicinity of \$40 apiece.

The Court: In addition to the cost of taking off the planking?

The Witness: That's right.

The Court: That includes labor and material?

The Witness: That's right.

The Court: What about stub frames on the port side, is that the same price?

The Witness: You are speaking of frames now?

The Court: Putting in stub frames.

The Witness: They would be of a different value, because they were sawed frames on the port side and steam bent frames on the starboard side. [528]

The Court: On the port side you would take them and saw them according to size?

The Witness: Yes.

The Court: What would they run a frame?

The Witness: I didn't make any estimate of that because I wasn't concerned, not arising out of the accident.

The Court: You know generally what it costs to put a stub frame in, do you not?

The Witness: I would say those frames would probably run in the vicinity of \$25 apiece.

The Court: For labor and material?

The Witness: That is for the frame itself. There isn't much material involved. It is a frame section. It isn't really a stub frame. It is a frame section.

The Court: What do you mean it is a frame section?

(Testimony of Arthur DeFever.)

The Witness: It is a section of a frame fastened in place to make a sister frame in that area.

The Court: Does that figure that you gave just include the making of the stub frame and the fastening in the boat?

The Witness: That is right. It doesn't include removing the planking or installing it to install the frames.

The Court: Did you find any evidence that the deck of this boat had been shoved out of true?

The Witness: Just in the immediate area of the covering board the seams were loosened. The covering board was crushed [529] only and not broken clean through, and that is a pretty good guard against protection of your decking.

The Court: What do you mean by the covering board?

The Witness: It is a wide member which is the outer member around and adjacent to the stanchions or rail. It is usually a member which is wider than the decking itself.

The Court: That is all.

Mr. Callaway: That is all.

Mr. Shallenberger: Nothing further.

Mr. Callaway: I may have just one question of the witness here, your Honor.

That is all.

Mr. Shallenberger: I have two witnesses in rebuttal, your Honor. They shouldn't take long. Mr. Filosevich, take the stand.

NICK MILOSEVICH

called as a witness on behalf of the intervening libelants, having been previously sworn, was examined and testified, in rebuttal, as follows:

The Clerk: Your name is Nick Milosevich?

The Witness: Yes, sir.

Direct Examination

By Mr. Shallenberger:

Q. Mr. Milosevich, you have been sworn before in this [530] trial and testified? A. I did.

Q. You testified you were at the wheel of the vessel during this collision? A. Yes.

Q. Mr. Milosevich, do you recall what kind of a foghorn was on this vessel?

A. We have a foghorn on that vessel that they use for them big trucks, long one, I don't know how you call them, a big long one.

Q. How old was that horn, do you know?

A. Just we bought it maybe a month before that, just a new one.

Q. How loud a sound did it make?

A. A big sound, make like a big—you know when train goes, this Daylight train, it is the same thing like that.

Q. Does it make a whistle like those modern diesel Daylight trains?

A. Yes, same thing, same type of whistle.

Q. Was that the type of sound it was making at the time of the collision? A. Yes.

(Testimony of Nick Milosevich.)

Q. And do you know how much air pressure was being used to operate that horn?

A. You can use from 5 pounds up to 60. More pressure [531] she sounds better. We was using about 60 pounds all the time.

Q. Was that true at the time of the collision?

A. Yes.

Q. Now, then, Mr. Milosevich, was the engine aboard the Bear a loud-sounding engine?

A. No.

Q. Why?

A. Because we have silencer on it, muffler.

Q. When you were at the wheel of the vessel could you hear the engine exhaust?

A. Hard to hear it; just a little bit.

Q. Now, Mr. Milosevich, if you are going 6 or 7 knots an hour—Withdraw that.

When the Marsha Ann towed you in after the collision, do you know in which direction she went?

A. After collision, you mean?

Q. Yes, when she towed you in.

A. We was going straight for San Pedro lighthouse.

Q. All right. Mr. Milosevich, here is the entrance to the breakwater (indicating); will you indicate where you and the Marsha Ann were, to the best of your recollection, and the direction in which you went?

A. When she hit us we was about $2\frac{1}{2}$ mile to his lighthouse; the direction we was going, west

(Testimony of Nick Milosevich.)

northwest and a [532] quarter north, about 295 degrees.

Q. Were you being towed in that general direction when you were towed in by the Marsha Ann?

A. Yes, because he heard the whistle, too, afterwards, you know, so he took us right in. It takes us from this place to the cannery over an hour, an hour and 15 minutes, to get there. He was towing us, of course, slow.

Q. Now, then, Mr. Milosevich, about how long did it take him to get from where the collision was to the light, abreast of the light?

A. I should judge by his power he can make it easily in 15 minutes.

Q. What did he do? That is what I mean. How long did it take him?

A. It takes us over half hour to get there from collision.

Q. Did you form any estimate as to how fast he was towing you?

A. I should judge about 3, 4 mile an hour. I wouldn't say any more than that, because on account of the boat they take no chances. They can do faster if they want to, but they tow us that fast.

Q. To the best of your recollection it was about 3 or 4 miles an hour?

A. Yes. [533]

Q. Not any more than that?

A. No.

Mr. Shallenberger: That is all.

(Testimony of Nick Milosevich.)

Cross-Examination

By Mr. Callaway:

Q. Mr. Milosevich, which were you using, this air whistle that you had, or were you using this foghorn, as you say they have on the trucks?

A. I use foghorn, what they use on the trucks, these big trucks using it now.

Q. I thought you said on direct examination that you were blowing an air whistle, of which you gave us the dimensions.

A. That is the air whistle, of course.

Q. In other words, are both things you are talking about the same? A. Yes.

Q. They are not two separate whistles or signals? A. No; one single whistle it was.

Mr. Callaway: That is all.

Mr. Shallenberger: Nothing further. Mr. [534] Sims.

LOUIS SIMS

called as a witness on behalf of the intervening libelants, having been previously sworn, was examined and testified, in rebuttal, as follows:

The Clerk: Your name is Louis Sims?

The Witness: That is correct.

Direct Examination

By Mr. Shallenberger:

Q. Mr. Sims, when you did the work supervising

(Testimony of Louis Sims.)

the repairs of the Bear, by whom were you employed?

A. The underwriters of the Bear.

Q. Were you employed in any way by Mr. Korgan or Mr. Bilas? A. No, sir.

Q. Did Mr. Korgan or Mr. Bilas direct you to do anything with repairs to the Bear?

A. No, they did not.

Q. Did any representative of theirs direct you what to repair and what to do?

A. Well, there was one time during the course of the repairs that they took exception to one method that I was using.

Q. What was that?

A. In regard to the repair to the main clamp.

Q. All right. What did they want or say? [535]

Mr. Callaway: I object to that as being hearsay.

Mr. Shallenberger: This man is testifying as an expert as to what he did and didn't do, and who ordered him to do it. I believe that should be permissible.

Mr. Callaway: The conversation he had with the libelants in this case outside of the presence of the respondents?

The Court: Objection sustained.

Q. (By Mr. Shallenberger): Did you at any time during the ordering of the repair of this vessel follow the orders of the owners or their agents?

A. I did not.

Q. Did you do anything or order anything with regard to the repair of this vessel that you did not believe to be a result of the collision?

(Testimony of Louis Sims.)

A. I did not.

Q. Now, then, Mr. Sims, in your opinion why was it necessary to recalk almost the entire vessel as a result of the damage due to the collision?

A. Well, as I told you before, she had sustained a heavy damage. Her calking was slack and started and it was necessary to recalk it.

Q. Were there areas in the vessel that were recalked which had not been subject to damage, direct damage?

A. There were a few areas forward, at the forward end of the vessel, forward end of the seams, and also a few, [536] a very few, at the after end. However, the calking of the seams amidships, in carrying them to that extent forward and aft, it was necessary to carry them through to their end.

Q. Why?

A. Simply because if you don't, if you calk only part of a seam, your new calking has a tendency to open that seam where the calking stops, where the original calking remains it tends to open the seam, the seam will leak.

Q. Mr. Sims, I show you Respondents' Exhibit 7 and ask you to examine that. It appears to be a picture of the starboard side of the Bear, and I ask you to examine it with regard to the guard rail, and particularly with regard to a marking that appears on part of the length of the guard rail; do you know what that marking is?

A. Well, yes; it is probably more evident in one of the other photographs. However, that is where

(Testimony of Louis Sims.)

the steel facing had been removed from the guard, from the outer section of the guard.

Q. By the steel facing, you mean the steel strip that runs out as the outer layer of the guard rail?

A. That is correct.

Q. In this picture the guard rail exhibits it with that removed, is that correct?

A. That's right.

Q. Now, then, showing you Respondents' Exhibit A, [537] Mr. Sims, which appears to be one side of the ship showing certain sister frames and some stanchions, calling your attention to the broken area here in what I assume would be the ceiling of the ship, I believe you were shown this picture by Mr. Callaway and he has asked you if certain parts were broken and certain parts were rotten, is there any difference between that ceiling wood and the planking outside? A. Yes, there is.

Q. Will you state that difference?

A. The hull planking and also the main deck planking is a selected vertical grain wood. The vertical grain is used because of the fact that it bears up well under service, and also for the additional strength of the vertical grain. It is selected, it is a live wood, green wood, and in cases where it is possible, where the shipyards have it in stock, it is air-dried. The ceiling wood is not a wood that is subjected to the same use, so consequently it isn't, of necessity, the same quality.

Q. In that connection is it more apt to rot?

(Testimony of Louis Sims.)

A. Well, of course the thing is there the fact that it isn't the same quality, it is a lower quality wood, and quite often there is a lumber run in that has come from logs that has probably been down in the woods, or maybe a dead tree that has maybe been lumbered and sent through the mill. Any time dead lumber is used, it is much more subject [538] to a rot condition, which is entirely different in its character than the rot normally found in ship material.

Q. What is the purpose of the ceiling wood at this particular position in the vessel?

A. The purpose there is just to seal the inside of the fish hold for the ease of cleaning, to keep the filth and the dirt from the fish cargo that is put in there from getting down into the frames, so that when the fish are unloaded it is readily cleaned out.

Q. The knees on the port side of this vessel, I believe you testified some of them were broken by reason of the collision, is that correct?

A. No, they weren't broken, they were strained. Well, the knees on both the port and starboard side were strained, and I believe I specified in my report that they were opened on the toes and the foot of the knees on the starboard side and opened at the knee of the port side for $\frac{3}{8}$ of an inch.

Q. Well, it was the stub frames, then, on the port side that were broken, is that right?

A. Well, the original frames. The frames on the port side were broken on a line with the lower end

(Testimony of Louis Sims.)

of the knee. That is at a position where the planks were kicked out on the port side.

Q. In your opinion, Mr. Sims, were those stub frames broken by the collision, or were they broken before the [539] collision?

Mr. Callaway: I object to that as having been asked and answered. It has all been gone into.

The Court: I will overrule your objection. I think it was asked and answered of your expert. I want to know what Mr. Sims has to say about it.

The Witness: It is my opinion that they were broken as a result of the accident.

Q. (By Mr. Shallenberger): I show you Respondents' Exhibit L, Mr. Sims, which purports to be a portion of one of the frames from the vessel Bear, and ask you if that is in the same condition as the frames you saw upon the Bear before their removal?

A. In the same condition except for the fact that it has been out of service for practically a year, and during that time it has thoroughly dried out.

Q. What difference would that make in the piece of wood?

A. After a piece of wood has been wet for any length of time and absorbed moisture, and then again you dry it out, you have the condition that you have here; you have a dry, brittle feeling, and a tendency to dust, powder.

Q. Examining the end of this rib to the left of the direction that the writing goes on the exhibit

(Testimony of Louis Sims.)

card, can you tell me whether there is any rot there or not? [540]

A. No. That is sound wood.

Q. How about this part in here (indicating), indicating the left side.

A. As far as I can see it is sound wood.

Q. Is that rot? A. No, definitely not.

Q. What makes the difference in the coloration there?

A. Well, these brown spots here on the one side are where the fastenings—it is just as though we break out these places in here where the nails have been pulled, and this here is a section of a new break.

Q. Is there any rot anywhere on that timber? If so, will you point it out?

A. Not that I can see. That looks sound enough.

Q. Now, showing you Respondents' Exhibit M, which purports to be a piece of planking from the bear, would you examine that? A. All right.

Q. Do you find any rot on that piece of planking?

Mr. Callaway: That wasn't introduced for the purpose of showing rot. That was introduced for the purpose of showing the condition of the fastenings.

Q. (By Mr. Shallenberger): What would you say with regard to the condition of the fastenings?

A. Those particular fastenings right there have been [541] in service for some time. The cross-sectional area, the end of the nail has deteriorated

(Testimony of Louis Sims.)

and rusted. As far as that being an example of the general fastenings of the planks that were removed from that vessel, that is not a true example. You can see that from the frame, the section of the frame that we were just looking at.

The Court: I note these nails or fastenings shown in Exhibit M are square. Are they still using square nails?

The Witness: Yes.

The Court: So that wouldn't indicate any age of the nail?

The Witness: No, sir.

Q. (By Mr. Shallenberger): Were the fastenings throughout the Bear in better condition or worse condition than these examples?

Mr. Callaway: He just got through answering that.

A. They were in better condition.

The Court: The objection is overruled.

Mr. Shallenberger: I wasn't sure whether he had or not, Mr. Callaway. We haven't got a jury, so I don't think the judge is any more impressed.

Mr. Callaway: I was thinking of the time, Mr. Shallenberger.

Q. (By Mr. Shallenberger): Showing you Respondents' Exhibit N, which purports to be a portion of the frames taken from amidships on the port side, will you examine those? [542]

A. Is it all right to try to stick a knife in it?

Q. Sure. What would you say with regard to the condition of those?

(Testimony of Louis Sims.)

A. I would say that has a degree of wet rot in it. However, the frame is not completely collapsed. It still has strength in it.

Q. Would it still be serviceable for any considerable period of time?

A. Well, if it wasn't disturbed it probably would be.

Q. Is this piece representative of the frame, generally, of the frame taken from admidships on the port side of the Bear?

A. When you say "representative" do you mean an average of 50 per cent? There were frames there, yes, but as far as them being the case rather than the exception, no.

Q. In other words, frames of this sort were in the minority, is that correct?

A. That is correct, that is absolutely correct. And another thing, the frames that were in that condition were not on the same plane, they were not on the same line.

Mr. Shallenberger: That is all.

Cross-Examination

By Mr. Callaway:

Q. Looking at Respondents' Exhibit B, would you say the frames there, the old ones, were at all representative [543] of the frames in that vessel?

A. No.

Q. In other words, you just opened it up and you just happened to find them like that in that one spot?

A. I didn't find those there at all.

(Testimony of Louis Sims.)

Q. What do you mean?

A. That is not my photograph.

Q. Isn't that representative of what you saw?

A. No, that isn't. That is representative of that particular frame, that's right.

Q. In other words, they were just this way in this one spot, but when you went on down you found them to be in better shape than this, is that right?

A. There were none of the frames that were not serviceable.

Q. Does a frame have to collapse before it ceases to be serviceable, Mr. Sims?

A. No. When a frame is broken it is not serviceable.

Q. Assume it is not broken, does it have to collapse? Doesn't a vessel like this get considerable stress and strain in bad weather on the sea?

A. Occasionally they do, yes.

Q. Don't they do it when it is stormy?

A. That's right.

Mr. Callaway: That is all. [544]

Mr. Shallenberger: That is all, Mr. Sims.

That is all, your Honor.

The Court: Is that all?

Mr. Callaway: Yes.

The Court: Do you want to argue this a little bit?

Mr. Callaway: What I would prefer to do, if your Honor please—the doctor really told me not to come down at all today, but I was anxious to

complete this. We have already submitted most of our law except on one point. I think we might file some very short arguments in the form of briefs so the court could have them and study them. Also, due to the lateness of the hour.

The Court: You want me to be honest with you, don't you, counsel?

Mr. Callaway: Certainly.

The Court: I don't know whether briefs on the factual part of it would make much difference. We have one point of law I am not quite satisfied about. On the factual side of this, I don't know whether briefs would help or not. After all, you sit here and listen for four or five days. However, I don't want to cut you off.

Mr. Shallenberger: I don't want to send Mr. Callaway to the hospital, but I am perfectly willing to argue it.

Mr. Fall: What point of law did your Honor have in mind that he still was not satisfied on? The question of [545] whether or not a member of the crew had a cause of action and who should represent him?

The Court: Yes, that is a point of law.

Mr. Fall: I think that has been answered very, very briefly. The question of explaining that to the court is this: It is the contention of counsel that there is no cause of action. Well, I think we have shown there is, that a cause of action does exist.

Who is to institute or proceed and prosecute that cause of action? The contention of the respondent

in this case has established that, that the seaman must, for the reason that it cannot be placed upon the owners of the vessel upon which he is employed to determine an ultimate question of law as to who must be sued. That is the answer.

Here they contend, "Well, no, we are not liable, you should have sued the owner."

The Court: Wait, counsel. You very glibly tell me that this is done very customarily, it is common practice in admiralty, and so forth, and I am still looking for a case that is on all fours on that proposition.

We have some cases that squint at it. We have the Van Camp case. This is my first quarrel with admiralty, but it has been interesting. I have been reading cases at night, and I have been looking through Benedict on Admiralty. I don't want to keep counsel here if he doesn't— [546]

Mr. Callaway: If it wouldn't help the court any——

The Court: My mind isn't made up on this matter, on certain phases of it, possibly. I take it the things I have to decide are these: We have the libels filed here by the seamen and the interveners, the owners. I suppose the first question we have got to find out is whether there was any negligence on the part of the Marsha Ann. Is that right?

Mr. Callaway: Sure.

The Court: Then in view of your stipulation, and also because of the nature of the case, I suppose I have to find whether there is any negligence on the part of the Bear. In other words, it is one

of those strange cases where both boats were apparently standing still, if I listen to some of the witnesses.

Mr. Shallenberger: The more admiralty cases your Honor tries the less strange that will become.

The Court: At any rate, those two things have to be decided. Then if there is negligence on the part of the *Marsha Ann*, regardless of whether or not there is negligence on the part of the *Bear*, I have to find out what the damage was. Is that right?

Mr. Callaway: That's right.

The Court: Then I have to determine if there is negligence on the part of the *Marsha Ann*, and then regardless of any negligence on the part of the *Bear* I have to determine [547] whether the fishermen have a right to recover.

Mr. Callaway: That is right.

The Court: And if they do have the right to recover we would refer to a referee the amount.

Mr. Callaway: That is right.

The Court: That is what I have to decide.

Mr. Shallenberger: Whether we argue this or not, I want to give this to the court. It is a case which we ran across during the trial of the case. You can switch names and with very few minor details have the same factual situation that we have here. It is the case of *Grenadier v. The August Korff*, 74 Fed. 974. It is an old case, but it is still very good law, and the facts are practically on all fours with this case.

The Court: I will permit you to file briefs on it if you will do it promptly.

Mr. Callaway: All right.

Mr. Shallenberger: If we are going to file briefs, could you do what judges many times do? I always appreciate it. I am sure that your Honor probably did when he was practicing. Could you indicate what your Honor is interested in hearing something about?

The Court: Well, that is the point. If I start to tell you what I think about it I will wind up by deciding the case. [548]

Mr. Callaway: I am not planning, as far as I am concerned—I am trying to limit the opposition—on filing a long-winded re-dissection of the evidence.

The Court: Supposing I decide part of the case right now, then go on from there and see where we are. There will still be some things to be decided when I get through telling you what I am thinking about.

I was not concerned about the stipulation you gentlemen entered today, because I believed the witnesses when they said that the motors, the engines of the Marsha Ann was not going at the time of the collision. I came to that conclusion. Other witnesses to that effect didn't add or detract.

I think that the motors of the Marsha Ann were not turning at the time of the collision. However, I think the Marsha Ann at the time of the collision was sliding through the water fast enough to constitute negligence on the part of the Marsha Ann,

together with all the other circumstances of the case.

I am prepared to find negligence on the part of the Marsha Ann.

That leaves open the question of negligence on the part of the Bear, which, frankly, I have not resolved that question in my mind.

I understand that this is not a case where contributory negligence bars recovery, but if there was negligence on the [549] part of the Bear, then there is a mutual fault situation.

I reached my conclusion as to the Marsha Ann on a number of things. Some of them you may not agree with. I do not know whether I would even put them in findings, or not. But in trying to find out where the truth lies, sometimes it is rather difficult.

First of all, you have got a situation where the Marsha Ann had come up the coast without any fog, gone into the harbor and discharged her fish. She had then started to proceed out of the harbor, and the first fog was encountered before she got to the light within the harbor.

On the other hand, the Bear had hit fog earlier, had hit fog off of Seal Beach, probably, and had been fighting its way through the fog for some time before the collision.

I have driven an automobile in fog, and so have you, and I know it is a matter of common experience when you hit fog, and the fog begins to get heavier, your first tendency is to bowl on through it, and the farther you get into the fog the more difficult it becomes to drive, and you wind up creep-

ing in the fog. There is nothing in the record, probably, on that particular point, but my conclusion is that the Marsha Ann, having hit the fog for the first time inside the harbor, the fog began to thicken up, probably by the time she got to the light it began to get heavier, the Marsha Ann's tendency [550] was to cut her speed as she proceeded, but she had for the first time come in contact with the fog.

The Bear, on the other hand, had been fighting it, had a number of its men up on top where they watched the thing.

That is one conclusion.

Secondly, I am led to the conclusion by the fact that the Marsha Ann had radar, one of these new-fangled inventions that are supposed to prevent accidents. The Bear did not. The Bear had to rely on the old-style method of knowing where you were and trying to protect yourself.

I am impressed by the witness who said that as the Bear proceeded along it tried to answer whistle for whistle. That is, if it heard a whistle out here some distance that gave a sort of a long toot, it answered with the same kind of a whistle, indicating that it heard that fellow. If someone over here pulled a short one, the Bear answered with a short one.

It was feeling its way through the fog, relying on nothing but what seamen had to rely upon from the earliest days of the sea, just their senses, sound and sight.

The Marsha Ann, on the other hand, picked up

this boat on radar, picked up the boat which turned out to be the Bear. There is evidence that the engineer told the skipper that the boat was following an erratic course, and they lost it within the 200-yard section of radar where you can't see what is [551] going on. Well, I cannot escape the conclusion that, having had the benefit of radar, having picked up a boat which was coming toward it, off its port, I guess it was, off the port side, and then having lost it within the 200-yard range, meaning that the boat was close, the safe thing might have been for the Marsha Ann to have reversed her motors, come to a complete stop, and given the signal indicating she was standing still, until this boat got out of the way. Apparently that was never done. At least there is no evidence that the Marsha Ann ever reversed her motors and brought the boat to a complete stop. There is conflicting evidence. There is testimony that she shut her motors off, would slide along, and then start them again and stop. Then there was evidence that she was standing still, which I am not inclined to credit.

That was further borne out today when one of the witnesses said that he told the skipper that that boat was pretty close, because he could hear its motor.

Thirdly, I reached the conclusion for the reason that I am convinced the boats came together with more of an impact than some of the witnesses have indicated. Certainly they both weren't standing still.

I am convinced that the damage that was done,

even to an old boat, even to a boat on which there were probably timbers that were not as they should have been, was not the damage which would have occurred had the helm been ported [552] and the rear of the stern of the Bear started to swing around and come into collision with what the respondents claim was practically a standing boat. Boats do not respond that rapidly.

The witnesses for the respondents themselves, none of them said it was more than 25 feet away when they first saw it. A witness today fixed 25 feet and fixed a second or two from the time he saw the boat until the time of the collision. He said he saw them port the helm.

In 25 feet and the few seconds that were involved, the helmsman couldn't have ported his helm and caused his stern to swing around and hit the Marsha Ann with force enough to go clear in through practically 12 inches of the guard rail and the band that surrounded it.

Also, I have in mind the fact of the way the boats came together. The force of the blow on the Marsha Ann was taken right on the nose, a 3 by 3 iron band down the front, a good solid piece, with the planking coming in and joining the section in the front. A boat could probably take a stronger blow in stride in that section than it could probably anywhere else.

On the other hand, the Bear, having been hit amidships, was not in position to stand that kind of a blow. It explains to some extent the reason for the relatively small amount of damage on the

Marsha Ann and the greater amount of [553] damage on the Bear.

I will be glad to have you in your briefs point out to me whether or not, number one, the Bear was guilty of contributing—do you call it contributory negligence in admiralty?

Mr. Shallenberger: No. Whether it is one of the proximate causes.

The Court: All right. Number two, briefly, what the amount of damage could be.

I am bothered about this damage situation. Here is a boat, the Bear I am speaking about, which obviously is not a new, up-to-date boat; however, it is operating, it is being fished, and a collision occurs and it suffers considerable damage. It might have continued to operate for several years had the collision not occurred. On the other hand, it might have gotten out in a storm and a good heavy sea might have ripped some of it apart. I am interested in the question of damage.

And then, finally, which is a point of law, in addition to stating to me that the seamen are entitled to recover, I would like to have you spell out a theory for me, at least. If you can't cite a case to me, spell out a theory on which you would give a seaman a recovery.

O.K.?

Mr. Callaway: All right. [554]

The Court: On the matter of briefs, how much time do you want? I think you had better take the burden on proving the——

Mr. Callaway: This is the 19th. I will have mine before January 1st. Is that too long?

The Court: That is all right. How much time do you want, on the 10th?

Mr. Shallenberger: That will be satisfactory.

The Court: Do you want five days to reply?

Mr. Callaway: Five, or I will tell the Court I don't want to make a reply, one or the other. If I don't think it is important, I won't make one.

Mr. Roethke: January 1st is a Sunday, January 2nd is a holiday. I am just thinking out loud here.

The Court: You said the first of January. By that do you mean the end of the month, the 31st of December?

Mr. Callaway: I assumed the Court wasn't going to work on it over the holidays, anyway.

The Court: Some of these gentlemen have a case here tomorrow.

Mr. Callaway: I will try to get it in on the 31st. If I can't, I will have it in on the 3rd.

The Court: If you prefer, we will fix some date in January.

Mr. Shallenberger: If the Court please, let's make it [555] the 3rd and 13th, because if he gets it in on the 31st, I am very sure I am not going to work on it until the 3rd.

The Court: All right. We will give him January 6th, which is the end of the week, that is Friday; and we will give you gentlemen until the 16th.

Mr. Shallenberger: That is satisfactory.

The Court: And then Mr. Callaway will either

file a reply brief by the 20th or will not file one.

Mr. Callaway: Or I will give you a letter telling you I do not intend to file one.

The Court: Thank you for your assistance and your courtesy in this case, gentlemen. I enjoyed trying it. We are not through with it yet.

Mr. Roethke: Thank you.

Mr. Shallenberger: We have enjoyed trying it.

The Court: It will stand submitted with the filing of the briefs. [556]

LIBELANT'S EXHIBIT No. 14-A

Invoice

Harbor Boat Building Co.
Builders of Fine Craft
Terminal Island, California
(Los Angeles Harbor)

Date: February 16, 1949

Sold to Boat "Bear" and Owners

c/o Mr. Sam Bilas

922 W. 19th Street, San Pedro, Calif.

and Mr. George Koran

955 W. 8th Street, San Pedro, Calif.

and Mr. John Breskovich

Tacoma, Washington

Job No. 6942

Inv. No. 4658

Provide services of men and pumps necessary to keep vessel afloat at dock prior to drydocking.

Drydock vessel.

Clean underwater body free and clear of all marine growth, and coat with one coat of approved bottom paint.

Remove to approved butts 14 courses of hull planking and bulwark planking on the starboard side inclusive of the sheer strake in the way of damaged area. Renew planking as original. Remove to approved butts starboard side main guard in way of damaged area and renew as original. Fabricate and install 46 bent oak sister frames starboard side of hull in way of damage. Remove an approximate 16-foot section of starboard side covering board in way of damaged area and renew as original. Main clamp on starboard side, where broken, to be cut out and suitable filler blocks installed. Hanging knees in way of damaged clamp to be removed, Douglas fir backing piece bolted through original clamp and over damaged area, original knees to be notched and refitted to vessel. Two main deck beams in way of damaged area to be repaired and/or renewed as found necessary. Remove and replace as original approximately 50 lineal feet of ceiling wood on the starboard side to facilitate repairs.

Remove to approved butts 8 strakes port side hull planking along and above the turn of the bilge, and renew as original. Supply and fit 44 oak stub frames (sawed) amidships on port side where original frames broken out. Release and jack back to original position 3 hanging knees on both port and starboard sides. Remove approximately 14 feet of both fore and aft ends of port and starboard gar-

board strakes where sprung and renew as original.

Fabricate, fit and install Douglas fir engine stiffeners on outside of hull and through-bolt from engine foundations, both port and starboard.

Reef out entire hull caulking and recaulk, re-cement and/or re-putty as original.

Entire original hull planking to be refastened.

Reef out and recaulk entire aft main deck. Remove all turntable blocks to allow for recaulking of main deck, and replace same upon completion of caulking. Main deck planking to be pitched as before.

Jack back main deck and hatch coaming and all sprung structure to original position. Refasten hatch coaming and butt ends of all after main deck planking.

Mainmast chain plates on starboard side of bulwarks to be restored as original.

Main engine and shafting alignment to be checked and realigned as found necessary. Main engine to be given dock trial upon completion of repairs.

Agreed price: \$17,770.67. (2½% sales tax on material included).

Cleaning and painting of bottom, in the amount of \$269.00, included in agreed price.

Copies to: P. Banning Young, Attn. Mr. Sims

801 North Fries Avenue

Wilmington, California

Wilvers & De Fever, Attn. Mr. Williams

1225½ South Leland St.

San Pedro, California

Mr. Colin Davies
624B S. Pacific Coast Highway
Redondo Beach, California

Seen, noted and approved without prejudice.
Subject to adjustment. P. Banning Young, Engineer and Marine Surveyor.

/s/ L. O. SIMS.

2/28/49

Received in evidence Dec. 19, 1949.

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 28th day of November A.D., 1950.

/s/ SAMUEL GOLDSTEIN,

/s/ S. J. TRAINOR,

Official Reporter.

[Endorsed]: No. 12761. United States Court of Appeals for the Ninth Circuit. Jack Borcich, Andrew Vilicich and Bortul Zankich, Co-Owners of the Oil Screw Marsha Ann, Appellants, vs. Joseph Ancich, John Kaiza, Anton Bogdanovich, Peter Svorinich, Martin Miskulian, Ray Zukowski, William T. Decker, George Korgan, Sam Bilas, W. H. Hoopes, Nick Milosevich, George Korgan and Sam Bilas, Appellees. Apostles on Appeal. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed December 5, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 12761

JACK BORCICH, ANDREW VILICICH and
BORTUL ZANKICH, Co-Owners of the OIL
SCREW "MARSHA ANN,"

Appellants,

vs.

W. H. HOOPES, NICK MILOSEVICH, GEORGE
KORGAN, JOSEPH ANCICH, JOHN KAI-
ZA, ANTON BOGDANOVICH, PETER
SVORINICH, MARTIN MISKULIAN, RAY
ZUKOWSKI and WILLIAM T. BECKER,

Appellees.

STATEMENT OF POINTS AND DESIGNA-
TION OF RECORD FOR CONSIDERATION
THEREOF

I.

Jack Borcich, Andrew Vilicich and Bortul Zankich, Co-Owners of the Oil Screw "Marsha Ann," appellants, hereby adopt the Assignment of Errors filed with the Clerk of the United States District Court, Southern District of California, in the above-entitled action as their Statement of Points on which they intend to rely on this appeal.

II.

For consideration of the above-mentioned points, the appellants hereby designate the entire record as certified and transmitted by the Clerk of the United

States District Court, Southern District of California, in the above-entitled action.

Dated at Los Angeles, California, the 6th day of December, 1950.

TRIPP & CALLAWAY,

By /s/ HULEN C. CALLAWAY,
Attorneys for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Dec. 8, 1950.

